



An
Bord
Pleanála

Inspector's Report

ABP-311398-21

Development	Retention and completion of house with wastewater treatment system & polishing filter.
Location	Falchorrib Lower, Dungloe, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2151346
Applicant(s)	Marian Hall.
Type of Application	Retention permission and permission.
Planning Authority Decision	To grant.
Type of Appeal	Third Party
Appellant(s)	Aileen Oliver.
Observer(s)	None.
Date of Site Inspection	9 th February 2021
Inspector	Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The 0.234ha appeal site is situated c.6.5km to the south west of Dungloe in the townland of Falchorrib Lower, County Donegal. The site is situated to the south of a minor county road (cul-de-sac) on a peninsula separating Trawenagh Bay and Gweebarra Bay. The rural, coastal area is low lying with a small number of one off houses in the immediate area of the site. Ribbon development on the eastern side of the peninsula is visually removed from the appeal site.
- 1.2. Access to the site is via unmade up, private cul-de-sac from the public road (L-62231-0). The private road serves the appellant's dwelling to the north of the appeal site and another property to the south west of the site.
- 1.3. The appeal site comprises a roughly square site with a partially constructed dwelling located approximately central to the site. Post and wire fencing mark some of the boundaries. A stream runs along the northern boundary. On inspection, rushes were evident across much of the site, including to the south of the partially constructed dwelling.

2.0 Proposed Development

- 2.1. The proposed development comprises:
 - Retention permission for the partially completed single storey dwelling house (141sqm), and
 - Planning permission to complete construction of the house, with wastewater treatment system and polishing filter.
- 2.2. The proposed dwelling house is a single storey, three bedroom property. A wastewater treatment system and polishing filter is situated to the south of the proposed dwelling. Water supply is via a new connection to the public mains. Surface water will be disposed of into an existing land drain that runs along the northern boundary of the site. Included in the planning application are:
 - Supplementary Rural Housing Application Form.
 - Site Assessment Report.
 - Traffic Survey Report.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 19th August 2021, the planning authority decided to grant permission for the development subject to 11 conditions. These include:

- C2 – Occupancy condition.
- C3 – Provision of sightlines.
- C4 – Roadside boundary to incorporate an entrance of specified minimum width.
- C8 – All site boundaries to be landscaped with mix selected from native species list.
- C9 – Potable water to be from public watermains.
- C10 – Requires the wastewater treatment plan to be installed, operated and maintained in accordance with the EPAs Code of Practice 'Wastewater Treatment and Disposal Systems serving Single Houses' and the site assessment report. Sub-section 10(b) sets out minimum separation distances for the proposed percolation area.
- C11 – Development charge.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 16th August 2021 – Refers to the planning history of the site and policy context. In section 5.0 it addresses the points made in observations. The report considers that the principle of development has been established under PA ref. 19/50070 and that the applicant has demonstrated a rural housing need. Having regard to the modest nature of the dwelling, low impact single storey structure with narrow plan, within the visual zone of 3 existing similar sized dwellings, it is considered that the development can be accommodated on the subject site without having a detrimental impact on the receiving landscape. Access via the private lane and vision lines of lane with junction of

public road are acceptable. No issues arise in respect of public health or appropriate assessment. The report recommends granting permission subject to conditions.

3.2.2. Other Technical Reports

- Executive Chemist (16th July 2021) – No comments.
- HSE (28th July 2021) – Recommends conditions which detail the construction of the wastewater treatment system and soil polishing filter.

3.3. Prescribed Bodies

- None.

3.4. Third Party Observations

3.4.1. One third party observation raises the following concerns:

- Use of private access and water supply.
- Damaged to observer's property (access through lands).
- Lack of compliance with policies of the County Development Plan.
- Proposed development was commenced, in terms of its restoration, without planning permission. No further action was taken by the PA due to the development being in existence for >7 years.
- Impact on scenic area and groundwater.
- Traffic management and vision lines.

4.0 Planning History

- PA ref. 06/31272 – Permission granted in 2006 to Darren Williamson and Kathleen Ducie, for a single storey dwelling with treatment system on the subject site. Conditions restricted occupancy of the dwelling and prescribed the treatment of domestic effluent on site.

- PA ref. 19/50070 – Planning application for the retention of partially completed dwelling house and permission for completion of dwelling house with treatment system and polishing filter – deemed withdrawn.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. Donegal County Development Plan 2018 to 2024 is the statutory development plan for the appeal site. It designates the area in which the appeal site lies as a Stronger Rural Area and as an area of Especially High Scenic Amenity (EHSA), with the land to the east designated as an area of High Scenic Amenity (HAS).
- 5.1.2. Chapter 6.3 deals with rural housing. Policy objectives RH-O-3 to 6 ensure that new development in rural areas provide for genuine rural need, protect rural areas immediately outside of towns from intensive residential development, utilise existing infrastructure and promote housing which is sustainable and does not detract from landscape character or quality.
- 5.1.3. Policies RH-P-1 and RH-P-2 set out requirements to ensure that housing is of appropriate design quality, integrates with the landscape and does not erode the rural character of the area. Policy RH-P-3 applies in respect of stronger rural areas. It states that proposals for one off houses in these areas will be considered subject to compliance with policy RH-P-1 and -2 and where the applicant can demonstrate a rural housing need i.e.
- Persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base, for example, those working in agriculture, forestry, horticulture etc.
 - Persons with a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the existence in the rural area of long established ties (7 years minimum) with immediate family members, or by reason of providing care to a person who is an existing resident (7 years minimum),

- Persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location.

The policy does not apply where an individual has already had the benefit of a permission for a dwelling on another site unless exceptional circumstances can be demonstrated. New holiday home development will not be permitted in these areas.

5.1.4. Section 7.1 sets out policies in respect of Natural Heritage. For EHSA areas and HSA areas, the following policies apply:

- NH-P-6: It is a policy of the Council to protect areas identified as Especially High Scenic Amenity on Map 7.1.1: 'Scenic Amenity'. Within these areas, only developments assessed to be of strategic importance or developments that are provided for by policy elsewhere in this Plan shall be considered.
- 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.

5.1.5. Section 5.2 deals with water and environmental services. The Plan refers to the provisions of the Water Framework Directive and the objective of the Directive to maintain 'high status' of waters where it exists, to prevent deterioration in existing status waters and to achieve at least good status by 2027. Policy WES-O-4 implements the WFD through the implementation of the appropriate River Basin Management Plan and Programme of Measures at it affects the County. WES-O-5 protects surface water and ground water from pollution in accordance with the relevant River Basin Management Plan, Groundwater Protection Scheme and Source Protection Plans for public water supplies.

5.2. Natural Heritage Designations

5.2.1. The appeal site lies c.800m to the north of West of Ardara/Maas Road proposed Natural Heritage Area (NHA) and Special Conservation Area (joint site code 000197).

5.3. EIA Screening

- 5.3.1. Having regard to the limited nature and scale of the proposed development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Grounds of appeal are:

- Original dwelling constructed without planning permission in 2010/2011. Enforcement proceedings initiated with no attempt to comply with these, including reparation of damage to property (unauthorised access and destruction of property). No further action taken by PA (2019) as unauthorised development outside of 7 year period for enforcement action. Enforcement letters issued to Paul Tiernan, Dominik Sharkey and Mary Doyle (registered owners). No evident interest in lands by Bernadette Heaney.
- Access – Makes use of appellant's private access road and utilises water supply without permission. Damage to property from unplanned development.
- Percolation Area – It is not possible for the applicant to comply with condition no. 10(b) of the permission (minimum separation distances). Tecsoil site assessment refers to different site location.
- Policies – Development does not comply with policies of the County Development Plan, RH-O-3 to 6; RH-P-1. There are many other unoccupied properties for sale on the peninsula. The house is out of character with adjacent properties. The house adds to the unneeded environmental impact to drainage and use of wild land.
- Development located in an area of scenic amenity and where groundwater is particularly vulnerable to contamination.

6.2. Applicant Response

6.2.1. The applicant makes the following comments on the appeal:

- Owner of the site is Bernadette Heaney who has given consent for planning application (Appendix 1). Lands transferred in 2008 from Dominic Sharkey and Mary Doyle (Appendix 2).
- Planning permission approved under PA ref. 06/31272 and mistakenly repositioned on the site, hence application for retention. Design of the dwelling is per that approved under PA ref. 06/31272.
- Access. A right of way to the site from the public road is provided in the original Land Transfer documents for the site. No trespass has occurred. Access has been in existence since 1995 (see aerial, page 2).
- Percolation area. The Site Layout plan accurately shows the size of the percolation area and distances to all relevant boundaries, EPA guidelines and requirements of condition no. 10(b) of the permission. Site Assessment demonstrates the site can accommodate a wastewater treatment plant to meet EPA Code of Practice for Domestic Waste Water Treatment Systems. EHO agreed with site assessment.
- Policies of County Development Plan.
 - RH-O-3 – Applicant has demonstrated rural housing need, grant of permission includes an occupancy condition, PA satisfied development complies with RH-P-1 and -2. Development does not create suburban pattern of or ribbon development, is modest in scale, vernacular in style and in keeping with scale and mass of dwellings in vicinity.
 - RH-O-4 – Development is c.8km south west of Dungloe and would not give rise to incremental growth of town.
 - RH-O-5 – Development lies in HSA area, which are considered to have capacity to absorb sensitively located development. Development, due to its scale, design and siting will not in accumulation with other development have any detrimental impact on rural character.

- RH-O-6 – Development will not give rise to groundwater or surface water pollution, substantiated in site assessment report. Little development in area of the site/concentration of wastewater systems locally. Site is not in a European site.

6.3. Planning Authority Response

6.3.1. The planning authority make the following comments on the appeal:

- Notwithstanding enforcement issues, the application was assessed on its own merits.
- Insufficient detail in respect of rights of access to support concerns raised. Lane described on plans as a ‘shared private laneway’. Matter is a civil one.
- Having regard to favourable report by EHO and Site Suitability Assessor, PA is satisfied that condition no. 10(b) can be complied with. Ground water contamination was not raised as a concern.
- Regard is given to supporting statement by Cllr. Marie Therese Gallagher confirming applicant’s rural housing need. Dwelling is modest in size and scale and will integrate appropriately with context. Development complies with Rural Housing Policies and objectives of CDP.

6.4. Observations/Further Responses

- None.

7.0 Assessment

7.1. Having inspected the appeal site, examined the application details and all other documentation on file and having regard to relevant local and national policies and guidance, I consider that the main issues in this appeal can be confined to the matters raised by parties, namely:

- Impact on visual amenity.
- Impact on water quality.
- Consistency with policies of County Development Plan.

7.2. The appellant also raises the following issues which I comment on below:

- Enforcement action – Enforcement action in respect of the existing structure on the site is a matter for the planning authority.
- Access to lands – The applicant has provided a copy of land registry documents indicating a right of way from the public road to the appeal site. I am satisfied that sufficient legal interest has been demonstrated to allow the planning application to be made. Further concerns are a matter for the courts.
- Housing need – The applicant has submitted a supporting statement from a local councillor attesting to the applicant's rural housing need. There is little information on file to support the applicant's position. However, if the Board were minded to grant permission for the development, this matter could be addressed by way of further information.

7.3. Impact on Water Quality

7.3.1. The applicant proposes discharging wastewater from the dwelling to a packaged wastewater treatment system and polishing filter, to be situated to the south of the proposed. The waste water treatment system is sized for a population of 6 p.e.

7.3.2. The site slopes gently towards the sea, but is removed from it by c.240m and a stream runs along the northern boundary of the site (upslope of the WTS). Potential targets for pollution are therefore most likely groundwater (groundwater flow is westerly). At the time of site inspection there were rushes present across most of the site and in the location of the polishing filter, indicating impeded drainage.

7.3.3. The site assessment would appear to be carried out in the approximate location of the percolation area, although its exact location is unclear. The Site Suitability Assessment Report identifies the site as lying within a Poor Aquifer (Pi) where bedrock is generally unproductive except for local zones. Vulnerability rating is stated to be Extreme¹, soils on site are peat, bedrock is granite, and a Groundwater Protection Scheme is stated to be in place.

¹ NB GSI Spatial Resources indicate that the site lies in an area of High groundwater vulnerability, not extreme (see attachments).

- 7.3.4. The Site Suitability Assessment Report states that the Groundwater Protection Response R2¹ i.e. a wastewater treatment system is acceptable subject to normal good practice. The Site Assessment indicates 2m of peat in the area of polishing filter, with a perched water table at 1.7mbgl.
- 7.3.5. Percolation T tests indicate an average time to drop 100m of 123.5 minutes and consequential percolation tests indicate soils with a T value of 34.33. However, it is noted to that whilst the percolation test resulted in an acceptable T value, the variance in time drops (from fill nos. 1 to 3) indicate that the peat could eventually over time lose its capacity to transmit tertiary treated wastewater to groundwater effectively. The Site Assessment Report therefore recommends removal of all peat within the land area earmarked for the disposal of final wastewater, and construction of a polishing filter with imported soil, gravel and sand (see Recommendations section). Detailed design of the system is also set out under 'Recommendations'. This includes:
- A pump to ensure distribution of the secondary treated water in the percolation area.
 - Construction of the polishing filter to include deep gravel distribution bed, polishing filter (imported soil with T/P value between 5 and 20) and an intermittent sand filter.
 - Observation ports in the sand medium and underlying gravel distribution bed.
 - Enclosure of intermittent sand filter by an impervious layer to prevent possible bypass of secondary treated wastewater to surrounding soils.
 - Gravel filled land drain around the perimeter to protect the polishing filter from surface water runoff.
 - Supervision of construction by a suitably qualified person and documentary evidence of works.
- 7.3.6. Final disposal of effluent is to ground, having passed through the polishing filter.
- 7.3.7. The applicant's Site Assessment is a robust and considered report. Whilst this constructed area may provide sufficient depth of soils to allow wastewater discharged from the mechanical aeration system to be degraded, the distribution area is constructed in a peat bog. In this instance, peat soils extend beneath the

base of the trial hole and perched water was encountered at 1.7mbgl. Consequently, there is a risk of impeded outflows from the distribution area (to ground), with the tertiary treatment system acting like 'bath tub', and providing an ineffective mechanism for the discharge of final effluent to ground. This matter is not specifically addressed in the Site Assessment.

7.3.8. Having regard to the foregoing, and mindful of the requirements placed on the Board as competent authority under the Water Framework Directive, I am not satisfied that the applicant has adequately demonstrated that the effluent from the development can be satisfactorily disposed of on site.

7.3.9. The Site Layout Plan indicates minimum separation distances for the proposed wastewater treatment system. Having regard to these, and the minimum separation distances for domestic waste water treatment systems, set out in the EPA's Code of Practice, it would appear that the infiltration/treatment area is closer to the proposed dwelling house than the 10m minimum separation distance (plans read c.9m). Further, it would appear that there is an inconsistency between the location of the dwelling partially constructed on the site and that shown in Site Layout Plan, with the constructed building possibly lying closer to the southern and eastern site boundaries (see attached aerial).

7.4. Impact on Visual Amenity

7.4.1. The appeal site is situated in an area of Especially High Scenic Amenity, on a low lying peninsula between Gweebarra Bay and Trawenagh Bay. Policies of the current County Development Plan preclude development from such areas unless it is of strategic importance or are provided for by policy elsewhere in the Plan.

7.4.2. Under PA ref. PA ref. 06/31272, permission granted in 2006 for a single storey dwelling with treatment system on the subject site and the principle of the development on the site was established. The permission has expired for >10 years and policies of the County Development Plan have evolved in line with national and regional policies.

7.4.3. The proposed dwelling is modest in scale, it is removed from other dwellings and does not give rise ribbon pattern of development. However, it is situated in a highly scenic, open, coastal landscape on a peninsula which separates Gweebarra Bay

and Trawenagh Bay. Development in the area of the site, particularly to the western side of the peninsula, is very modest (in scale and number of dwellings). The proposed development would increase the built infrastructure in the area, impacting on and detracting from its inherent nature, i.e. a coastal and undeveloped landscape. The current Donegal Development Plan refers to the sublime natural landscape of the EHSA's which are of the '*highest quality.... synonymous with the identity of County Donegal*' and with '*extremely limited capacity to assimilate additional development*'. Within this context, I am not satisfied that the proposed development is appropriate or warranted and I consider that it would detract from the amenity of the EHSA, and would therefore conflict with policies of the County Development Plan which seek to protect this resource.

7.5. Policies of the County Development Plan

- 7.5.1. For the reasons stated above, I am not satisfied that the proposed development complies with policies of the County Development Plan in respect of rural housing need (RH-O-3, RH-P-1), landscape and visual effects (RH-O-5, RH-P-1) and impact on groundwater (RH-O-6, RH-P-1).

8.0 Appropriate Assessment

- 8.1.1. Having regard to the modest nature of the proposed development, the location of development more than 800m to the north of West of Ardara/Maas Road proposed Special Conservation Area (site code 000197), the substantial scale of this European site which includes coastal waters, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site

9.0 Recommendation

- 9.1. I recommend that retention and permission be refused for the proposed development.

10.0 Reasons and Considerations

1. Having regard to the soil conditions on site, including the peat soils in the area of the proposed percolation area, 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 or disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.
2. The site of the proposed development is located in an area designated as Especially High Scenic Amenity in the current Development Plan for the area. The Development Plan recognises the extremely limited capacity of these landscapes to assimilate additional development and policies protect the areas from intrusive and/or unsympathetic development. This objective is considered reasonable. It is considered that the construction of a house on the site would be introduce further built development into the largely open and undeveloped character of the coastal landscape, to the detrimental to the high scenic amenity of the area and contrary to the objectives of the Plan. The proposed development would therefore, contrary to the proper planning and sustainable development of the area.

Deirdre MacGabhann

Planning Inspector

7th March 2022