



An
Bord
Pleanála

Inspector's Report

ABP-313444-22

Development	Demolition of conservatory and construction of new conservatory, extensions to rear, and all associated site works.
Location	New Row, Mullans, Donegal Town, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2250241
Applicant(s)	Noreen Portno.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Marian Thomas.
Observer(s)	None.
Date of Site Inspection	25 th July 2022.
Inspector	Barry O'Donnell

1.0 Site Location and Description

1.1. The subject site has a stated area of 0.041ha and is located at New Row, in a central part of Donegal Town. The site contains a detached bungalow on small plot, with a small, elevated garden to the rear.

2.0 Proposed Development

2.1. The proposed development entailed within the public notices comprises the demolition of a flat roof conservatory and construction of a new conservatory, extensions to rear of house, together with alterations to facades and associated site works.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority granted permission on 7th April 2022, subject to 5 no. conditions.

- Condition no. 4 required that the eastern boundary of the development shall not exceed the established building line.
- Condition No. 5 required that the eastern boundary of the gym at roof height shall not exceed further than the building line.

3.2. Planning Authority Reports

3.2.1. A Planning Report dated 4th April 2022 has been provided, which reflects the decision to grant permission. The report expresses general satisfaction regarding the proposed scale and design, save for the incorporation of mechanical ventilation in proximity to the site boundary. The report recommends that permission be granted be granted, subject to 5 No. conditions, which are generally consistent with the Planning Authority's decision.

3.2.2. A separate appropriate assessment screening report is appended to the Planning Report, which determines that the development will not have a significant effect on Lough Eske & Ardnamona Woods SAC.

3.2.3. Other Technical Reports

The Planning Report indicates that the **Roads Department** and **Conservation Officer** were consulted but did not comment on the application.

3.3. **Prescribed Bodies**

3.3.1. The Planning Report indicates that Irish Water and the Department of Community, Heritage and the Gaeltacht were consulted, but did not comment on the application.

3.4. **Third Party Observations**

3.4.1. A single third-party submission was received, the issues raised within which can be summarised as follows: -

- Overshadowing,
- Unauthorised development at the site,
- Inadequate architectural drawings,
- Impact on value of adjacent property

4.0 **Planning History**

S5 22/15 (ABP-313870-22): Current referral submitted by Marian Thomas in relation to whether works including an increase in height c. 0.5m on the site of a former domestic garage is or is not development or is or is not exempted development.

5.0 **Policy Context**

5.1. **Seven Strategic Towns Local Area Plan 2018-2024**

Map 6 of the local area plan is the land-use zoning map for Donegal Town. It identifies that the site is subject to the 'Town Centre' zoning, with an objective 'To

sustain and strengthen the defined town centre area as the centre of commercial, retail, cultural and community life.'

5.2. Relevant policies include: -

Policy UB-P-27: Proposals for extension to a dwelling shall be considered subject to the following criteria: a) The development reflects and respects the scale and character of the dwelling to be extended and its wider settlement; b) Provision is made for an adequate and safe vehicular access and parking; and c) The proposal would not adversely affect the amenity of adjoining properties.

5.3. **Natural Heritage Designations**

5.3.1. The site is not within or adjacent to any European site. Lough Eske and Ardnamona Woods SAC (Site Code 000163) encroaches to within c.15m of the site, on the opposite side of New Row.

5.4. **EIA Screening**

5.4.1. The subject development constitutes smallscale development, within the curtilage of house. This type of development does not constitute an EIA project and so the question as to whether or not it might be sub-threshold does not arise.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- Height of gym
 - The garage/gym was increased in height by c.500mm without the benefit of planning permission in 2014, in a manner that impacts the appellants property. The proposed illustrates a further proposed increase in height.
 - The impact of the increased height is that light to the first-floor gable window is impeded.
 - Works to raise the height of the garage/gym should not have taken place without the benefit of permission.

- The appellant's property is particularly vulnerable to loss of daylight and requires protection.
- The Planning Authority's statement that there is no impact on daylight to ground floor level of the appellant's house and minimal impact at first floor level is considered to be unreasonable, in view of the location of the appellant's house to the east, where afternoon and evening sun is affected.
- Oversailing the property boundary
 - The fascia board over the garage/gym oversails the property boundary, projecting over the appellant's property.
 - Works have also taken place that are not illustrated on the application, in the form of vents and openings.
- Unclear conditions
 - Conditions 2, 4 and 5 of the Planning Authority's decision are ambiguous and lack clarity, contrary to the *Development Management Guidelines (2007)*. The conditions are not precise and are not enforceable.
 - Any conditions that required revisions to the development should have required additional drawings to be agreed with the Planning Authority.
 - The Planning Authority should have required the development to be contained within the subject site and not oversail the property boundary.
- Proposed conditions
 - There is no issue with the proposed extension and conservatory. Works to the garage/gym are not outlined within the application but the Planning Authority is aware of them and have not interrogated same.
 - The appellant would agree to a grant of permission with conditions requiring the following
 - Roof profile of the gym shall not exceed the cill of the adjacent gable window of the appellant's home.
 - Development to be contained within the subject site.

- No rooflight to extend beyond the height of the revised roof profile and no mechanical ventilation on the boundary or within 3m of the boundary to the south-east.
- No openings, vents, pipes or other development shall be placed on the south-eastern boundary of the gym structure.
- The gym shall not be let or sold separately to the main house.
- In the absence of such conditions, the Board is requested to refuse permission.

6.2. Applicant Response

6.2.1. A response to the appeal was received on 23rd May 2022, submitted on behalf of the applicant by Cornerstone Architecture. Its contents can be summarised as follows: -

- Height of gym
 - A new replacement roof was added to the garage/gym before July 2014.
 - The original roof was monopitch, with its high side facing the appellants property. The new roof is no higher than the high side of the original roof.
 - Removal of the front parapet would likely have been beneficial to the appellant, with reference to shadow.
 - The roof was inspected by the Planning Authority at the time and was considered to be exempted development.
 - Proposed windows are small and will not impact the neighbouring property.
 - References within the public notices to alterations to facades include for minor dressing of the fascia board of the gym. There are no other proposed changes to front or side elevations.
- Fascia to eastern boundary
 - The distance between properties at this boundary is 500mm. The fascia facing the appellants property will not be increased in height or width. Proposals to clad the fascia in zinc will not now take place on this elevation.
- Other works

- Proposed extract vents will be applied to rear/north side elevation and will not face directly toward the appellants property. The existing vent referred to by the appellant will be removed and repositioned to the rear/north elevation, if such work is facilitated.

6.3. Planning Authority Response

6.3.1. A submission was received on 20th May 2022, the contents of which can be summarised as follows: -

- Issues raised in the appeal were assessed during the application.
- Investigation of enforcement case UD 14/124 found that roof level of the structure had been lowered from a previous height, thereby allowing additional height to the appellant's house. These works were found to be exempted development under S4(1)(h) and (j) of the Act.
- The issue of loss of light is longstanding and the Planning Authority considers the matter resolved.

6.4. Observations

6.4.1. None.

6.5. Prescribed Bodies

6.5.1. The appeal was circulated to An Taisce, The Heritage Council and the Department of Housing, Local Government and Heritage but no responding submissions were received.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the third-party appeal in detail, the main planning issues in the assessment of the proposed development are as follows:

- Principle of development
- Legal title

- Impact on neighbouring property
- Appropriate Assessment

7.2. Principle of Development

- 7.2.1. The proposal is consistent with the Town Centre zoning which applies to the site under the Seven Strategic Towns Local Area Plan, under which residential development is acceptable.

7.3. Legal Title

- 7.3.1. The appellant submits that the fascia board over the garage/gym oversails the property boundary and projects into their property. It is also stated that works have also taken place that are not illustrated on the application, in the form of vents and openings.
- 7.3.2. The applicant submits that a new monopitch roof was constructed over the garage in 2014 and that it is no higher than the high point of the previously existing roof.
- 7.3.3. The Planning Authority submission on the appeal states that an enforcement investigation took place in respect of the replacement roof, Reg. Ref. UD 14/124 refers, following which it was found that the works undertaken were exempted development under S4(1)(h) and (j) of the Act.
- 7.3.4. It appears to be accepted by all parties that the works in question took place in 2014 and I note from the applicant's submission on the appeal that it is no longer proposed to undertake and upgrade/cladding works to the east-facing elevation of the gym that abuts the appellant's property boundary. In view of this, it is my opinion that this appeal is not the correct forum for determination as to whether the long-completed works oversail the property boundary and this a matter for the Courts. Planning enforcement is also an issue for the Planning Authority, which is the competent authority in this respect.

7.4. Impact on Neighbouring Property

- 7.4.1. The appellant does not express any concerns regarding the proposed extensions and I see no reason to question the Planning Authority's determination that they are acceptable. The proposed extensions comprise a utility extension to the rear and an

enlarged conservatory, to the front. The total area of extensions proposed is c.18sqm and I am satisfied that this can be accommodated on the site.

- 7.4.2. The appellants concerns relate to the height of the gym and the proximity of its roof to a first-floor gable window within their property.
- 7.4.3. Regarding the existing condition/layout of the gym roof, I have previously commented on this and noted that it appears to be accepted by all parties that the replacement roof was constructed in 2014 and that that an enforcement investigation took place, following which it was found that the works undertaken were exempted development under S4(1)(h) and (j) of the Act. Enforcement is a matter for the Planning Authority, which is responsible for this aspect of the planning code and is not a matter to be considered by the Board in its decision-making capacity. I therefore do not propose to revisit the Planning Authority's determination on the matter.
- 7.4.4. I note, as the appellant states, that the development involves cladding of the gym roof and minor alterations to its overall profile. The applicant states in their response to the appeal that the height of the roof will not increase but that the zinc cladding proposed over the existing fascia will increase its specific height by c.40mm. The application drawings identify that the fascia would be raised on the west side of the roof (the opposite side to the appellant's house) in order to provide a level finish across the front elevation. I am satisfied, provided there is no increase in the height of the gym roof, that cladding of the fascia will not restrict or impede existing light levels to the appellant's adjacent gable window.
- 7.4.5. Regarding the issue of oversailing the property boundary, I have similarly expressed the view that this appeal is not the correct forum for determination as to whether the long-completed works oversail the property boundary and that this a matter for the Courts. The Board will note that, in response to the appeal, the applicant now proposes that no cladding will be applied to east side of the gym roof and that the existing relationship to the appellant's house will be maintained.
- 7.4.6. Regarding the appellant's objection to the installation of vents on the east elevation of the gym, this appears to be a grill vent based on the photograph provided. I am unsure if it is associated with mechanical or natural ventilation but, in any case, I do not consider its presence has any material impact on the appellant's amenity. I also

note that the applicant states that they are willing to relocate this, subject to the appellant facilitating work. I do not consider it would be justified to refuse permission on the basis of this issue.

7.5. **Appropriate Assessment**

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 7.5.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Background on the Application

- 7.5.2. A screening report for Appropriate Assessment was not submitted with this appeal case. Therefore, this screening assessment has been carried de-novo.

Screening for Appropriate Assessment- Test of likely significant effects

- 7.5.3. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.5.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

- 7.5.5. The development is described at Section 2 of this Report. In summary, permission is sought for demolition of a flat roof conservatory and construction of a new conservatory, rear extensions together with alterations to facades and associated site works. The site is located at New Row, Donegal Town and is adjacent to the River Eske, which contains the Lough Eske and Ardnamona Wood SAC (Site Code 000163).
- 7.5.6. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, I consider the following potential impact mechanisms require examination:

- The impact of potential surface water discharges from the site containing suspended solids or pollutants during construction on water quality within Lough Eske and Ardnamona Wood SAC.

Submissions and Observations

7.5.7. The submissions from the appellant, applicant and Planning Authority are summarised as Section 6 of my Report.

European Sites

7.5.8. The development site is located adjacent to Lough Eske and Ardnamona Wood SAC, which encroaches to the opposite side of the road. There are other European sites within a 15km search zone but, in view of the smallscale nature of the development, I am satisfied that there is no realistic possibility of significant effects on any European site other than that in the immediate vicinity of the site.

7.5.9. A summary of Lough Eske and Ardnamona Wood SAC is set out in the table below.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)
Lough Eske and Ardnamona Wood SAC (Site Code 000163)	<ul style="list-style-type: none"> • Oligotrophic waters containing very few minerals of sandy plains, • Petrifying springs with tufa formation, • Old sessile oak woods with Ilex and Blechnum in the British Isles, • Freshwater Pearl Mussel, • Salmon • Killarney Fern 	adjacent

Evaluation of potential significant effects

7.5.10. The subject site is on the opposite side of the road to the River Eske, which includes Lough Eske and Ardnamona Wood SAC. But there is an impermeable barrier in the form of a low-level wall separating the river from the road and I noted on my visit to the site that there is a public surface water gully adjacent to the site, also on the opposite side of the road. There is a camber in the area of the site, which directs surface waters to the roadside gully and other gullies along the road.

7.5.11. Construction activity may give to rise some run-off containing suspended solids, but any such discharge will drain directly to the public sewer and away from the SAC. In view of this, I am satisfied that there is no real likelihood of significant effects on the SAC and the issue can be excluded.

Screening Determination

7.5.12. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site No. 000163, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

8.1. I recommend that permission be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions below, the proposed development is in keeping with the character of the area and would not seriously injure the amenities of the area or the amenities of properties in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development
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	<p>shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity</p>
2.	<p>Prior to the commencement of development, the applicant shall submit revised drawings, for the written approval of the Planning Authority, which indicate the omission of proposed works to the east elevation of the gym/garage.</p> <p>Reason: In order to protect the amenity of the adjoining occupier.</p>
3.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to and agreed in writing with the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development and shall include proposals for safe storage of construction and demolition materials.</p> <p>Reason: In the interests of public safety and to protect the ecological potential of the area.</p>

Barry O'Donnell
 Planning Inspector

21st September 2022