



An
Bord
Pleanála

Inspector's Report

ABP-313608-22

Development	Refurbishment and extension to an existing dwelling house with installation of a new wastewater treatment system and all other associated site development works
Location	Kilpheak, Newmills, Letterkenny, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2250084
Applicant(s)	Mark Carbury
Type of Application	Permission.
Planning Authority Decision	To grant.
Type of Appeal	Third Party
Appellant(s)	Denis Doherty
Observer(s)	None
Date of Site Inspection	15 th September 2022
Inspector	Deirdre MacGabhann

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1.0 Site Location and Description

1.1. The 0.52ha appeal site lies c. 8km to the west of Letterkenny in the townland of Kilpheak, Newmills. The site lies in a rural area characterised by scattered rural development and one off houses. It is situated to the south of the public road (L-6372-1) and comprises a derelict dwelling, its curtilage and private access road. The access road also serves a dwelling to the west of the appeal site (the appellant's property). The existing structure is set back from the public road and is not overly visible. Topography of the site falls to the south, towards the River Swilly.

2.0 Proposed Development

2.1. The proposed development, as revised by way of further information (received 11th April 2022) comprises the refurbishment (81sqm) and extension (54sqm) to a dwelling house with new waste water treatment plant situated to the rear (south) of the proposed dwelling and upgraded access road. Water supply is proposed from the public mains (new connection) and surface water will be discharged into a watercourse. The planning application includes:

- Site Suitability Assessment Report. This indicates that soils have a sub-surface percolation value of 28.97 and are suitable for effluent disposal via secondary treatment system and soil polishing filter.
- Folio Map DL444090F and associated Land Registry documents. These indicate that the adjoining dwelling and access road to the appeal site are owned by the applicant's father.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 28th April 2022, the PA decided to grant permission for the development subject to 10 no. conditions. Condition no. 7 requires the access road serving the site not be finished in black topping or defined by concrete kerbing, but surfaced with natural or coloured aggregate gravel with a natural edge finish. Condition no. 10 specifies requirements for the wastewater treatment system.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

- 8th March 2022 – Refers to internal and external reports, the submission by a third party and policy context. It considers the merits of the development under headings including principle, siting and design, residential amenity, access, public health, appropriate assessment (AA) and environmental impact assessment (EIA). The report considers the development to be acceptable, but recommends further information in respect of legal title over access road and improvements to access road.
- 26th April 2022 – Refers to the FI submitted and recommends granting permission subject to conditions.

3.2.2. Other Technical Reports

- EE Roads (16th February 2022) – No objections subject to standard conditions.

3.3. **Prescribed Bodies**

- None.

3.4. **Third Party Observations**

3.4.1. There is one third party observation made by the occupant of the property adjacent to the appeal site:

- Observer has absolute rights over access lane to appeal site.
- Lane is not suitable for construction traffic and would invade observers privacy.

4.0 **Planning History**

- None.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

5.1.1. The appeal site is situated in an area of High Scenic Amenity and in a Stronger Rural Area around Letterkenny Town. Relevant policies are:

- In Section 7.1.1 Areas of High Scenic Amenity are described as '*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 objective NH-O-5 affords protection to landscape character, including consideration of scenic amenity designations of the Plan.
- Policy NH-P-7 facilitates development in High Scenic Amenity areas which is of a nature, scale and location which allows it to integrate with the character of the landscape and subject to the other policies and objectives of the Plan.
- RH-P-6: Refurbishment of existing dwellings/buildings. This policy considers proposals for the refurbishment of derelict buildings within rural areas, for use as a permanent or holiday home, subject to criteria regarding retention of majority of structure, integration with host environment, appropriate treatment of wastewater, no road safety issues, compliance with policies RH-P-1 (includes reference to design, siting, impact on protected areas, access, drainage, flood risk) and RH-P-2 (design and integration with rural character) and modest extension of the original building.

5.2. Natural Heritage Designations

5.2.1. The appeal site is largely removed from sites of natural heritage interest. Approximately 2.5km to the north of the site is the Leannan River Special Area of Conservation (SAC), site code 002176. Approximately 1.5km to the east is River Swilly Valley Woods proposed Natural Heritage Area (NHA), site code 002011.

5.3. EIA Screening

- 5.3.1. Having regard to the modest nature and scale of the proposed development, it would not result in a real likelihood of significant effects on the environment. 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, by the owner of the property to the west of the appeal site, are:
- Appellant has absolute rights over access lane. Applicant should provide a new access to the development.
 - Use of the access lane will affect the appellant's privacy and security.
 - If used during construction, it will make the access to the appellant's dwelling unsafe and dangerous.

6.2. Applicant Response

- None.

6.3. Planning Authority Response

- 6.3.1. In response to the appeal, the PA make the following comments:
- Consider shared driveway is preferable.
 - Sufficient legal title demonstrated to carry out the development.

6.4. Observations/Further Responses

- None.

7.0 Assessment

7.1. Having examined the policy context of the development, application details and all other documentation on file, and inspected the site, I consider that the main issues in this appeal relate to:

- Legal entitlement to access the appeal site, and
- Impact of proposed road upgrading works on residential amenity (privacy, security) and traffic safety.

7.2. Legal Entitlement to Access Road

7.2.1. I note that the appellant disputes the applicant's ownership of the appeal site. On file is information on the land Folio that provides access to the appeal site. This Folio, DL44490F, includes the appellant's dwelling to the west of the appeal site and the access road to the appellant's dwelling. Ownership is indicated to be Shaun Carberry, the applicant's father. Further, the planning application includes a letter from the owner giving permission for the applicant to use the existing driveway.

7.2.2. Having regard to the foregoing, I am satisfied that the applicant has provided sufficient evidence of their legal interest in the appeal site, and adjoining land, for the purposes of the planning application and decision. Any further disputes are a matter for the Courts and lie outside the scope of this appeal.

7.3. Impact of Road upgrading works

7.3.1. Access to the appeal site is by way of the existing private road from the public road. Sightlines at the junction of the private access lane and public road are good in both directions having regard to the likely speed of traffic on the minor road.

7.3.2. The private road serves the existing dwelling to the west of the site and the appeal site. The private lane is c.3.5m wide and at the time of site inspection was not made up (see photographs). The applicant proposes upgrading of the access lane, applying a crushed stone base to the existing base and finishing the road with 14mm chips.

- 7.3.3. The access road the proposed dwelling is c.10m east of the appellant's dwelling. On the eastern side of the property a glazed room on the ground floor that looks east, towards the access road. To the south of the building, the access lane is separated from the appellant's property by a substantial evergreen hedgerow.
- 7.3.4. The existing access road is used to provide access to the appeal site and fields associated with the landholding i.e. there is already light use of the access road by agricultural traffic.
- 7.3.5. Use of the proposed driveway to serve the applicant's dwelling will increase use of the access road during construction and use of the dwelling during occupation. Construction traffic is likely to be larger than domestic traffic, however, use will be infrequent and short term. The access road is largely straight in alignment further any traffic on it will be readily visible from the public road, the appellant's site and from the appeal site. Having regard to this alignment, visibility of all traffic on the access road and likely limited frequency of construction traffic, I do not consider that any significant risk of traffic hazard will arise during construction.
- 7.3.6. In the longer term domestic traffic is likely to be light, in terms of vehicle size and vehicle movements. Given the proximity of the access road to the appellant's property, I would accept that the privacy enjoyed by the property may be reduced (this issue would also apply during construction). However, this could be addressed by additional planting along the western side of the access road, to reduce views into the appellant's property. This matter could be addressed by condition. Subject to this provision, I do not consider that the appellant's property would be seriously affected by any impact on privacy.
- 7.3.7. With increasing activity on the access lane, and occupation of the existing derelict building, security at the site may well increase.

8.0 Appropriate Assessment

- 8.1. Having regard to the modest nature of the proposed development and its distance from European sites, 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 permission be granted for the development subject to conditions.

10.0 Reasons and Considerations

Having regard to the modest nature of the proposed development, short term nature of construction work and arrangements for the upgrading of the proposed access lane, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenity of property in the vicinity of the site or endanger public safety by way of traffic hazard. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 11th day of April 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>Water supply and drainage arrangements, including the disposal of surface water and front roadside drainage, shall comply with the requirements of the planning authority for such works.</p>

	<p>Reason: To ensure adequate servicing of the development, and to prevent pollution.</p>
4.	<p>Surface water from the site shall not be permitted to drain onto the adjoining public road.</p> <p>Reason: In the interest of traffic safety.</p>
5.	<p>The access road serving the subject site shall be surfaced with natural or coloured aggregate gravel and left with a natural edge.</p> <p>Reason: In the interest of visual amenity and rural environment.</p>
6.	<p>The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:</p> <p>(a) additional planting along the western side of the access road to frame the entrance to the adjoining dwelling and reduce views of it from the access road,</p> <p>(b) retention of all sound trees, shrubs and hedgerows, except to provide for the construction of the development, and</p> <p>(c) strengthening of the hedgerow along all side and rear boundaries of the site.</p> <p>Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>Reason: In order to assimilate the development into the surrounding rural landscape, in the interest of visual amenity and biodiversity.</p>
7.	<p>(a) The secondary treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 26th day of January 2022, and in accordance with the requirements of the document entitled "Code of Practice for Domestic</p>

	<p>Waste Water Treatment Systems” Environmental Protection Agency, 2021.</p> <p>No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.</p> <p>(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.</p> <p>(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.</p> <p>(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.</p> <p>(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health.</p>
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Deirdre MacGabhann

Planning Inspector

22nd September 2022