



An
Bord
Pleanála

Inspector's Report ABP-313877-22

Development	Retention of garage and associated site works
Location	Murvagh Upper (Glebe), Ballintra, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2250636
Applicant(s)	Raymond Scott.
Type of Application	Permission.
Planning Authority Decision	Grant permission.
Type of Appeal	Third Party
Appellant(s)	Carole Pollard and Ray Butler.
Observer(s)	None.
Date of Site Inspection	5 th December 2022.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.4ha and is located in the townland of Murvagh Upper, approx. 12km south of Donegal Town. The site contains a detached house, a partially constructed detached building within its curtilage (the building the subject of this application) and a domestic garden.
- 1.2. The site is located at the end of a private stone track that also provides access to another house, to the north-east.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the retention of a building for use as a domestic garage, together with associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 26th May 2022, subject to 6 No. conditions.

Condition No. 4 required removal of a septic tank that was previously shown to serve the building, within 3 months of the decision.

3.2. Planning Authority Reports

- 3.2.1. A Planning Report dated 17th May 2022 has been provided, which reflects the Planning Authority's decision to grant permission. The report states that the principle of a garage to serve the house on the site is acceptable and no concerns are expressed regarding the scale and design. The report notes that previous applications had shown a septic tank with connection to the building and recommends that a condition be attached requiring its removal. The report recommends that permission be granted, subject to 6 No. conditions, which are consistent with the Planning Authority's decision.

3.2.2. A separate Appropriate Assessment Screening Report was appended to the Planning Authority, wherein it is determined that the possibility of significant effects on a European site can be excluded.

3.2.3. Other Technical Reports

The Planning Report indicates that the **Roads** Department was consulted on the application but did not make a submission.

3.3. **Prescribed Bodies**

3.3.1. The Department of Community, Housing and Local Government made a submission on 9th May 2022, advising that a screening for appropriate assessment should be undertaken.

3.3.2. The Planning Report indicates that Irish Water was consulted on the application but did not make a submission.

3.4. **Third Party Observations**

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

- Non-compliance with development plan design guidelines,
- History of applications to retain the subject building,
- Residential character of the building,
- Need for a garage to serve a holiday home,
- Planning enforcement proceedings, and
- Environmental hazard.

4.0 **Planning History**

21/52507: Permission was refused on 10th February 2022 for retention of an ancillary building for the existing dwelling house, on the site of a former dwelling house.

21/51395: Permission was refused on 2nd September 2021 for a replacement dwelling on the site of a former dwelling house, together with associated site works.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

- 5.1.1. The site is in a rural, unzoned part of County Donegal. Map 6.2.1 'Rural Area Types' identifies that the site is in a stronger rural area.
- 5.1.2. According to Map 7.1.1 'Scenic Amenity' the site is located partly within an area of 'High Scenic Amenity' and partly within an area of 'Especially High Scenic Amenity'. Section 7.1.1 of the development plan discusses landscape designations. For areas of High Scenic Amenity states that these areas *'are landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a fundamental element of the landscape and identity of County Donegal. 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.'*
- 5.1.3. For areas of Especially High Scenic Amenity it states that the areas *'are sublime natural landscapes of the highest quality that are synonymous with the identity of County Donegal. These areas have extremely limited capacity to assimilate additional development.'*
- 5.1.4. Policies NH-P-6 and NH-P-7 are relevant to the development. They state: -
- 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. Other relevant policies include: -

AB-P-12: It is the policy of the Council both to protect the residential amenity of existing residential units and to promote design concepts for new housing that ensures the establishment of reasonable levels of residential amenity.

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.

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within or adjacent to any designated European site but is in close proximity to Donegal Bay (Murvagh) SAC (Site Code 000133) and Donegal Bay SPA (Site Code 004151), which encroach to within c.50m west of the site.
- 5.2.2. Donegal Bay (Murvagh) (Site Code 000133) is also designated as a proposed Natural Heritage Area.

5.3. EIA Screening

- 5.3.1. 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

- 6.1.1. The grounds of appeal can be summarised as follows: -
 - There is no need for a garage of this scale and it militates against the preservation of the rural character of the area.
 - The applicant is seeking to develop a holiday home on the site and has shown disregard for planning legislation in doing so. The development will intensify the use of the site.

- The applicant's family own and operate a holiday rental business in the locality.
- Access to the site requires the use of third-party lands, owned by the appellants and which is inadequate. A right of way exists, but there is no right to provide improvements to the access. The development will result in the creation of a traffic hazard.
- The development has no means of effluent disposal and together with the existing holiday home, gives rise to a potential environmental hazard.
- The existing house on the applicant's landholding is unauthorised.
- The application is inadequate, with reference to the drawings provided, the absence of EIA and non-compliance with building regulations.
- The subject structure is unacceptably close to adjoining property owned by the appellants.
- The scale and form of the building are incongruous and do not comply with Part B of the development plan.
- The description of the building as a replacement dwelling is misleading.
- The development will impact the coastal dune system in the area.
- The decision to grant permission is inconsistent with previous decisions to refuse permission for it.
- The Board should refuse permission for the development.

6.2. **Applicant Response**

6.2.1. The application made a submission on the appeal on 13th July 2022, the contents of which can be summarised as follows: -

- A house previously existed on the site and the applicant undertook works to replace the house on the same footprint, bringing this building to roof stage. Subsequent applications to regularise the building were refused and have shown that the building cannot be retained as a house.

- In order to save the building, it is proposed to be retained as a domestic garage and the number of windows opened and internal partitions have been reduced. There is no storage within the existing house.
- It is unreasonable of the appellant to suggest that condition No. 5 of the Planning Authority's decision will be breached. The requirement of condition No. 4 are also referenced.
- The garage is adequately sized to serve the house and is hidden by vegetation.
- The garage will not affect the blue flag beach. There is no sewerage connection.
- No consent was given for photos taken of the garage.

6.3. Planning Authority Response

6.3.1. The Planning Authority made a submission on the appeal on 13th July 2022, the contents of which can be summarised as follows: -

- It would be unreasonable to assess the proposal on the basis of what it may be used for, rather than what it is proposed. Conditions imposed are adequate and enforceable.
- Other issues raised are addressed by the Planning Report.

6.4. Observations

6.4.1. None.

6.5. Further Responses

6.5.1. None.

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;

- Impact on neighbouring property;
- Other issues; and
- Appropriate Assessment

7.2. Principle of Development

- 7.2.1. The applicant has previously applied and been refused permission by the Planning Authority for retention of the subject building as (a) a replacement dwelling and (b) an ancillary building to the main house on the site. In this context, the applicant now seeks to retain the building for use as a garage.
- 7.2.2. I am satisfied that the development of a garage is consistent with the established residential use of the site.
- 7.2.3. Regarding the scale of the building, it has a stated gross floor area of 92sqm. The appellant argues that there is no need for a garage of the scale proposed. The applicant argues that in order to save the building it is proposed for use as a garage and that there is no storage space within the house.
- 7.2.4. I agree with the appellant that the building is large in scale, given its intended use. But it is located to the rear of the house and is, in my view, subservient in its scale and massing to the main house, in accordance with Appendix 4 of the development plan which states that annex buildings and garages should be subordinate and sited to complement the main dwelling. The Board will note that Google Earth aerial photograph imagery also appears to indicate that there was previously a detached structure in the area of the subject garage, albeit occupying a reduced footprint.
- 7.2.5. The site is located at the end of a stone track, which provides access to the subject site and the north-east property, which is owned by the appellant. It is in a relatively isolated location, with very limited visibility, other than from the adjacent Murvagh Beach. I am satisfied that its visual impact is limited and, in view of the above assessment, I do not object to its overall scale.
- 7.2.6. Regarding the appellant's concerns that the applicant is seeking to develop a holiday home on the site, I would advise the Board that the proposed development comprises the retention of the building for use as a garage. Change of use of the structure, for use as habitable accommodation, would require a grant of planning permission and the Planning Authority has powers under the legislation to deal with

unauthorised development, should this issue arise. I do not consider this is an issue which would justify a refusal of permission.

7.3. Impact on Neighbouring Property

- 7.3.1. The appellant expresses concern that the building is unacceptably close to their property.
- 7.3.2. The site layout drawing identifies that the building is set c.3m off the shared boundary with the appellants property. I noted on my visit to the site that it is separated from the appellants property by a mature boundary hedge that is of roughly similar height to the building's ridge height. Whilst the upper part of the building may be visible from the appellant's property, I am satisfied that it does not have any significant or unacceptable impact on the appellant's residential amenity.
- 7.3.3. Issues such as overlooking or overshadowing of the appellant's property do not arise.

7.4. Other Issues

- 7.4.1. The appellant argues that the stone track access to the site is in third party ownership, that it is inadequate to serve the development and a traffic hazard is likely to be created. The stone track in question is narrow and is, in my view, incapable of accommodating anything other than domestic traffic associated with the houses which it serves. But I am satisfied that the proposed development will not generate any additional traffic and will not result in the creation of a traffic hazard.
- 7.4.2. Regarding concerns over effluent disposal, the Board will note that there is no habitable accommodation proposed and thus, no requirement for wastewater treatment as part of the development. The issue of wastewater treatment therefore does not arise.
- 7.4.3. Regarding concerns over the absence of an EIA, the construction of a domestic garage does not constitute an EIA project (as contained at Schedule 5 of the Planning and Development Regulations), so the question as to whether or not it might be sub-threshold does not arise.

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 retention of a building for use as a domestic garage, together with associated site works, on a site with a stated area of 0.4ha.

Submissions and Observations

- 7.5.6. The submissions from the appellant, applicant, Planning Authority and the Department of Community, Housing and Local Government (DAU) are summarised as Section 6 of my Report. In particular, the appellant expresses concern that the development will impact the coastal dune system in the area and DAU advise that the development should be screened for Appropriate Assessment.

European Sites

- 7.5.7. The site is not located within or adjacent to any designated European site. The closest such sites are Donegal Bay (Murvagh) SAC (Site Code 000133) and Donegal Bay SPA (Site Code 004151), which encroach to within c.50m west.

Evaluation of potential significant effects

- 7.5.8. The development does not give rise to any direct effects on the European sites, in terms of habitat loss or fragmentation.
- 7.5.9. Regarding the potential for indirect effects, the construction phase would have given rise to the potential for run-off containing suspended solid and/or pollutant content. However, there are no drains or open watercourses within or bounding the site, which would provide a direct hydrological link between the subject site and European sites. Taken together with the smallscale nature of the development, together with the separation distance between sites and the presence of intervening landform that acts as a buffer, I am satisfied that there is no real likelihood of significant effects on the European sites and the issue can be excluded at this stage.
- 7.5.10. Construction may also have given to some noise, but species of conservation interest within the SPA site that are present in the area are likely to be habituated to noise and disturbance associated with human activity in the area. In any case, any noise emanating from the site would have been temporary and would not, in my view, give rise to significant effects on SCI. I am thus satisfied that the issue can be excluded at this stage.

Screening Determination

- 7.5.11. 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 Nos. 000133 and 004151, 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 for retention 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 established residential use of the site, it is considered that, subject to compliance with the conditions below, the 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.	<p>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 shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity</p>
2.	<p>The external walls of the structure shall be finished in nap plaster within 6 months of the date of this order.</p> <p>Reason: In the interest of visual amenity</p>
3.	<p>The permitted structure shall not be used as habitable accommodation.</p> <p>Reason: In the interest of residential amenity.</p>
4.	<p>Surface water drainage arrangements shall comply with the Planning Authority's requirements, details of which shall be agreed within 6 months of the date of this order.</p> <p>Reason: In the interests of public health.</p>

Barry O'Donnell
Planning Inspector

9th January 2023.