



An
Bord
Pleanála

Inspector's Report

ABP-314026-22

Development	Permission for retention of (a) demolition of original dwelling and (b) construction of replacement dwelling together with associated site works
Location	GLENEELY, KILLYGORDON, CO. DONEGAL
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2250699
Applicant(s)	Shaun McConnell.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Brian and Anne Westman.
Observer(s)	None.
Date of Site Inspection	2 nd February 2023
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.21ha and is located in the townland of Gleneely, south of Killygordon, Co. Donegal. It has a triangular shape and contains a substantially complete part single storey and part one-and-a-half storey house and its attendant garden.
- 1.2. The site is accessed from Monellan Road (L-2994) and incorporates two vehicular accesses, on either side of the house. The site is adjoined to the south and west by improved grassland and to the north by a detached house.
- 1.3. The area has a rural character but displays signs of pressure for rural housing. There is housing on both sides of the road in the area of the site, including traditional and contemporary designs.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises permission for retention of demolition of original dwelling, retention of current dwelling as constructed and associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 10th June 2022, subject to 4 No. conditions.
 - Condition No. 4 required that the existing septic tank be decommissioned and a new wastewater treatment system be installed, within 6 months of the date of the decision.

3.2. Planning Authority Reports

- 3.2.1. A Planning Report dated 8th June 2022 has been provided, which reflects the Planning Authority's decision to grant permission. The report summarises the applicant's case regarding the chronology of events that led to the demolition of

elements of the original house and proposed extensions/redesign and expresses the view that as-constructed alterations do not introduce issues of overlooking, overshadowing or amenity issues for third party houses. Some tree felling is stated to have occurred, but this is stated to be a civil matter between parties. The report recommends that permission be granted, subject to 4 No. conditions, which are consistent with those attached to the Planning Authority's decision.

3.2.2. Other Technical Reports

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

3.3. Prescribed Bodies

3.3.1. Irish Water made a submission on 10th May 2022, advising that there is an existing water connection in place.

3.4. Third Party Observations

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

- Non-compliance with planning conditions.
- Impact of unauthorised demolition works.
- Breaches of building control/planning legislation
- Impact on character of the area.
- Visual impact
- Overlooking and loss of amenity
- Loss of trees
- Foul and surface water drainage

4.0 Planning History

2050506: Permission granted on 17th July 2020 for (1) erection of a new two storey extension to the side of existing cottage, (2) demolition of 2 existing rooms to the

rear and renovations and upgrading of existing cottage dwelling (3) installation of a new foul sewage wastewater treatment tank & percolation area and all other associated site works. The following conditions are relevant: -

2(a). Front elevation of the two storey side extension shall be modified providing for a one and a half storey design with wall plate dormer and simplified window design which respects the existing strong balanced solid to void ratio and scale of the existing single storey cottage.

5. All sound trees, shrubs and hedgerow shall be retained save as herein otherwise required and any tree or shrub species subsequently dying shall be replaced.

6(a). The existing septic tank/sanitary services serving the existing dwelling shall be decommissioned under the supervision of a suitably qualified competent person who can verify same. The decommissioning shall be documented and submitted to the Planning authority prior to completion of the development.

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. Relevant policy relating to domestic extensions include: -

RH-P-7: It is a policy of the Council to consider proposals for the replacement of dwellings in rural areas, where:

(a) The Planning Authority is satisfied that the existing dwelling does not make any significant contribution to the built heritage of the area in question and;

(b) The replacement dwelling would be of a scale and form generally consistent with that of the existing house on the site and would not result in any significant additional visual impact over and above that arising as a result of the existing development on site and;

(c) Adequate provision can be made for wastewater treatment on site; and

(d) The proposed development would otherwise comply with all other relevant policies of the County Development Plan.

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.

5.1.2. According to Map 7.1.1 'Scenic Amenity' the site is located within an area of 'Moderate Scenic Amenity.' Policy NH-P-7 is thus relevant to the proposal.

NH-P-7: Within areas of 'High Scenic Amenity' and 'Moderate Scenic Amenity' 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.

5.2. Natural Heritage Designations

5.2.1. The site is not located within or adjacent to any designated European site. The closest such site is the River Finn SAC (Site Code 002301), which is approx 2.8km north.

5.3. EIA Screening

5.3.1. An Environmental Impact Assessment Screening report was not submitted with the application.

5.3.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- Construction of more than 500 dwelling units,

5.3.3. The proposed development consists of a replacement house, the installation of a wastewater treatment system and associated site works. It falls well below the applicable threshold for mandatory EIA, as set out above.

5.3.4. In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development, it is considered that 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. The grounds of appeal can be summarised as follows: -

- Conditions attached to permission Reg. Ref. 20/50506 placed obligations on the application to amend the proposal and to submit compliance proposals prior to the commencement of development. No such submissions were made by the applicant before the commencement of development.
 - Failure to comply with conditions invalidated the permission.
- Permission was not sought for demolition of the previously existing house and justification for same was not provided. The need to demolish the house is questioned and it is submitted that it could have been avoided.
- Exemptions regarding rural housing compliance and financial contributions would not apply were the proposed development considered as a new house and not an extension.
- The building constructed is materially different in appearance, materials, height and scale to what was previously on the site, to the detriment of the character of the area.
 - A new building on the site gives rise to requirements for adequate sightlines, setback from the road, energy rating, etc.
- The building overlooks and overbears the appellants' property.
- The proposed extension imposes on the main part of the house and impacts on the visual amenities of the area.

- The removal of trees has created overlooking of the appellant's property and has resulted in an unsightly gap along the shared boundary with the subject site. Trees have other benefits, such as pollutant filtration, storm water management, climate change mitigation, etc and this has been lost. The loss of trees was not justified by the applicant.
 - Condition No. 5 of the Planning Authority's decision required that trees on the site should be retained.
- It is questioned whether minimum requirements for surface water drainage and foul drainage proposals can be achieved, in view of the unauthorised nature of works undertaken.
- The appeal also asks a number of questions regarding supervision and management of works under progression, by both the Planning Authority and other construction professionals.
- A grant of retention permission, following enforcement action, would set an undesirable precedent.

6.2. Applicant Response

6.2.1. The applicant made a submission on the appeal on 3rd August 2022, the contents of which can be summarised as follows: -

- When construction works began pursuant to permission Reg. Ref. 20/50536, it was found that large sections of the existing wall were defective. The wall was rebuilt on the existing foundations, the house has not been enlarged and windows and door opes are identical to the previously existing. An upper gable wall was provided in lieu of an original hipped end.
- Dormer windows and corner windows were redesigned, as per the Planning Authority's decision. It is acknowledged that compliance submissions were not made.
- The house design is in character with the surrounding area, which contains a mix of designs. It will not affect local amenities or be prejudicial to public health.

- The development does not directly overlook the appellants' property and windows are as per the Planning Authority's previous decision on Reg. Ref. 20/50506
- The house is not a protected structure and was in poor condition when purchased. The applicant's intention is to modernise.
- Concerns over health and safety are an issue for building control and are not relevant to the Board's determination.
- Trees were felled due to instability and disease and will be replaced, in order to fill the gap created. There were no preservation orders for the removed trees.
- A wastewater assessment was provided as part of the original application, which was approved by the Planning Authority. There is no additional loading proposed and no works on this element have commenced.
- The appeal contains numerous personal opinions and does not contain opposing professional/expert reports to substantiate claims.
- The appellants' objections are vexatious.

6.3. **Planning Authority Response**

6.3.1. None receive.

6.4. **Observations**

6.4.1. 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;
- Visual impact and impact on neighbouring property;
- Drainage;
- Other issues; and

- Appropriate Assessment

7.2. Principle of Development

- 7.2.1. Permission was granted under Reg. Ref. 20/50506 for renovation and extension of a then existing house on the site. According to the applicant, when construction work commenced it was found that large sections of existing walling were defective and a decision was made to demolish and replace all defective walling. The applicant states that walls were rebuilt in original locations and window and opes have also been provided in the approved locations. He further states that previously existing hipped ends have been replaced with upper gable walls and that dormer and corner windows have been redesigned, in accordance with the requirements of the planning permission.
- 7.2.2. The appellants question the need to demolish the previously existing house and argue that it could have been avoided. They also submit that an exemption from rural housing compliance would not have applied were the development to be considered as a new house.
- 7.2.3. Policy RH-P-7 of the development plan is the Council's policy control for replacement housing. It states that replacement houses will be considered in rural areas, in circumstances where: -
- (a) The Planning Authority is satisfied that the existing dwelling does not make any significant contribution to the built heritage of the area in question and;
 - (b) The replacement dwelling would be of a scale and form generally consistent with that of the existing house on the site and would not result in any significant additional visual impact over and above that arising as a result of the existing development on site and;
 - (c) Adequate provision can be made for wastewater treatment on site; and
 - (d) The proposed development would otherwise comply with all other relevant policies of the County Development Plan.
- 7.2.4. Regarding concerns over rural housing compliance, the Board will note that the policy does not require demonstration of a rural housing need.
- 7.2.5. I have given consideration to the proposal in the context of policy RH-P-7. Elevations and floor plan drawings of the previously existing house were not provided with the

application but I note from drawings provided as part of application Reg. Ref. 2050506 that it had a simple design and form. It was not a Protected Structure and was not identified on the National Inventory of Architectural Heritage (NIAH). The Board will note that the appellants provided a photograph of the previously existing house as part of the appeal.

7.2.6. The Planning Authority previously granted permission for a proposed extension of the same broad footprint to that constructed on the site and I note the applicant's submissions regarding the condition of the house encountered at the start of construction.

7.2.7. I am satisfied that the replacement house is compliant with policy RH-P-7 and is acceptable, subject to other relevant considerations and adequate provision being made for wastewater treatment on the site.

7.3. Visual Impact and Impact on Neighbouring Property

7.3.1. The appellants submit that the replacement house is materially different in appearance, materials, height and scale to what was previously on the site, to the detriment of the character and visual amenities of the area and that it overlooks and overbears neighbouring property.

7.3.2. The house has a part-single storey and part storey-and-a-half design, incorporating an open living/dining area, dining room, shower room and 2 No. en-suite bedrooms at ground floor level, together with 2 No. additional bedrooms and a bathroom at first floor level. The house largely retains the appearance approved under Reg. Ref. 2050506, save for reconsideration of the rear/side elevation roof design and a number of revised window and dormer windows designs. The applicant states that revisions to the design were incorporated based on the requirements of conditions attached to permission Reg. Ref. 2050506.

7.3.3. I noted on my visit to the site that there are a mix of house designs in the locality, including traditional bungalows and more contemporary two-storey designs and I am satisfied that the house has no negative impact on the visual amenities of the area. I note that the Planning Authority did not express any concern regarding the house design.

- 7.3.4. Regarding impacts on neighbouring property, there is a single house to the north, the appellants' home, which is approx. 45m north of the subject house. There are a limited number of north-facing windows within the house, which face toward the appellants' house but I do not consider they give rise to any significant or unacceptable degree of overlooking of the appellants' home.
- 7.3.5. I note the appellants' concerns regarding felled trees on the subject site and the creation of openings in the shared boundary, but I am satisfied that the subject site is adequately set away from the shared boundary.
- 7.3.6. In view of the separation distance between houses, I am satisfied that overbearance of the appellants' home does not arise.

7.4. Drainage

Surface water drainage

- 7.4.1. The applicant proposes to discharge surface water to an existing watercourse and, in responding to the appeal, states that the Planning Authority scrutinised this aspect of the development and did not raise any objection.
- 7.4.2. The appellant questions whether minimum requirements in respect of drainage arrangements can be achieved.
- 7.4.3. The surface water drainage system remains as per that approved under Reg. Ref. 2050506, with surface water primarily proposed to discharge to a drainage channel running parallel to the public road. I also note that a stone filled drain is to be constructed adjacent to the proposed wastewater percolation area, to intercept and divert groundwater away from the percolation area.
- 7.4.4. The Planning Authority did not object to the proposed surface water drainage system and I see no reason to question the proposed approach. The appellants' submission does not contain any information which would lead to me to question the viability of the proposed approach and I consider it would be unjustified to refuse permission on this basis.

Foul drainage

- 7.4.5. Foul drainage is proposed to drain to a wastewater drainage tank and percolation area, located to the rear (north-west) of the house. The tank is shown to be located 9m from the rear of the house and the percolation area is shown to be located 10m

from the rear of the house, in accordance with the requirements of the EPA *Code of Practice: Domestic Waste Water Treatment Systems (Population Equivalent ≤10)*.

- 7.4.6. Similar to surface water drainage proposals, the appellants question whether minimum requirements in respect of drainage arrangements can be achieved.
- 7.4.7. No site-specific assessment was submitted with the application but I note that the applicant states that the Planning Authority scrutinised this aspect of the development as part of the previous application and I note that a *Site Suitability Assessment Report* was submitted with the previous application. The report characterises the aquifer category and vulnerability class and outlines the results of the sub-surface test (T-test), 34.11min/25mm. As the applicant states, this aspect of the development was assessed by the Planning Authority as part of the previous application and I am satisfied that the results of the T-test demonstrate the site's suitability for an on-site system.

7.5. Other Issues

- 7.5.1. I noted on my site visit that there the southward sightline from the site access to the south of the house is impeded by the roadside hedge, which is shown to be in third-party ownership. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to close up this access and that access to the site should be taken solely from the access to the north of the house, which benefits from greater sightlines. The layout of this access can be agreed with the Planning Authority.
- 7.5.2. The appellants identify wider civic and biodiversity benefits of trees, in the context of the removal of trees from the subject site. I acknowledge the wider benefits of trees but in this instance there are no preservation orders in place to protect trees on the site. The applicant states that the trees were felled due to instability and disease and indicates an intention to plant replacement trees in the future. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to submit and agree proposals for landscaping as part of the development of the site.
- 7.5.3. The appeal also asks a number of questions regarding supervision and management of works under progression, by both the Planning Authority and other construction

professionals. The questions raised are not pertinent to the Board's consideration of this appeal and I have thus not addressed them any further in my report.

7.6. **Appropriate Assessment**

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 7.6.1. 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

- 7.6.2. 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

- 7.6.3. 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).

- 7.6.4. 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

- 7.7. The development is described at Section 2 of this Report. In summary, permission is sought for retention of demolition of original dwelling and construction of replacement dwelling, together with associated site works, on a site with a stated area of 0.21ha, in the townland of Gleneely, south of Killygordon, Co. Donegal. Foul drainage is proposed to drain to an on-site septic treatment system and surface water is proposed to drain to a drainage channel adjacent to the site boundary.

European Sites

- 7.7.1. The site is not located within or adjacent to any European site, with the closest such sites being the River Finn SAC (Site Code 002301), which is approx 2.8km north. There are other European sites within a 15km search zone but I am satisfied, given

the small-scale nature of the development that there is no real likelihood of significant effects occurring other than for sites in the immediate vicinity of the subject site.

- 7.7.2. Regarding the River Finn SAC, available EPA drainage mapping¹ indicates that surface waters in the area of the site drain northward, toward the River Finn. Whilst this provides a hydrological connection between the sites, I am satisfied that the subject site is sufficiently distant from the SAC site, such that significant effects on qualifying interests within the SAC are unlikely. In the unlikely event of a contaminant or pollutant being discharged from the site to the drainage channel, it is a considerable distance to the SAC and such material is very unlikely to be transferred to the SAC. Indeed, in the unlikely event that a contaminant or pollutant being transferred to the SAC, the quantity is unlikely to be sufficient to result in a significant effect.

Screening Determination

- 7.7.3. 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. 002301, 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.

- 7.7.4. This determination is based on the following: -

- The separation distance between the subject site and the European site and the absence of a direct hydrological connection between the sites.

8.0 Recommendation

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

¹ <https://gis.epa.ie/EPAMaps/>

9.0 Reasons and Considerations

Having regard to the provisions of Policy RH-P-7 of the Donegal County Development Plan 2018-2024, together with the planning history of the site and the character and pattern of development in the vicinity of the site, 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 provisions of the development plan and the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be retained 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 development hereby approved shall be amended as follows: -</p> <p>(a) The vehicular access to the south of the house shall be closed up within 6 months of the date of this Order.</p> <p>(b) The vehicular access to the north of the house, including visibility splays, shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing within 6 months of the date of this Order.</p> <p>Reason: In the interests of traffic and road safety</p>

3.	<p>Within 6 months of the date of this Order the existing septic tank on the site shall be decommissioned and removed from the site under the supervision of a competent professional.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p>Reason: In the interest of public health.</p>
5.	<p>The applicant shall submit landscaping proposals for the agreement of the planning authority, within 6 months of the date of this Order. The agreed scheme shall be implemented in full within 12 months of the date of such agreement.</p> <p>Reason: In the interests of visual amenity.</p>
6.	<p>The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009.</p> <p>Reason: In the interest of public health.</p>
7.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be</p>

	<p>referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
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Barry O'Donnell
Planning Inspector

1st March 2023.