



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314201-22

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| <b>Development</b>                  | Retention of boundary walls to the perimeter of dwelling house and associated site development works |
| <b>Location</b>                     | Cloughfin, Ballindrait, Lifford Po, Co. Donegal  |
| <b>Planning Authority</b>           | Donegal County Council   |
| <b>Planning Authority Reg. Ref.</b> | 2152276  |
| <b>Applicant(s)</b>                 | James and Caitriona O'Neill.   |
| <b>Type of Application</b>          | Permission.  |
| <b>Planning Authority Decision</b>  | Grant permission   |
| <b>Type of Appeal</b>               | Third Party  |
| <b>Appellant(s)</b>                 | Patrick O'Hagan.   |
| <b>Observer(s)</b>                  | None.  |
| <b>Date of Site Inspection</b>      | 3 <sup>rd</sup> February 2023.   |
| <b>Inspector</b>                    | Barry O'Donnell  |

## **1.0 Site Location and Description**

- 1.1. The subject site has a stated area of 0.17ha and is located in the townland of Cloughfin, west of the village of Ballindrait and west of Lifford, in east County Donegal.
- 1.2. The site contains a detached bungalow with integral garage and a private garden area. It is bounded to the east, west and north by a capped and plastered wall, which is of a stepped nature and of varying height. The rear garden also contains coniferous tree planting, which has the effect of screening it from view.
- 1.3. The site lies close to the junction of the L-6114 and L-2434 local roads and has frontage onto both roads. It is accessed from the L-6114 and the rear garden addresses the L-2434.
- 1.4. There are a number of rural residential properties in the area, including detached bungalows to the east and west.

## **2.0 Proposed Development**

- 2.1. The proposed development entailed within the public notices comprises retention of boundary walls and associated works.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The Planning Authority granted permission on 30<sup>th</sup> June 2022, subject to 1 No. condition.

### **3.2. Planning Authority Reports**

- 3.2.1. Planning Reports dated 10<sup>th</sup> January 2021 and 21<sup>st</sup> June 2022 have been provided, which reflect the decision to grant permission. The first report does not express any concern regarding the nature and scale of the development to be retained, but recommends a request for additional information regarding a third-party submission that the development falls outside the applicant's ownership boundary. The second

report followed receipt of the AI response and recommends that permission be granted, subject to 1 No. recommended condition.

### 3.2.2. Other Technical Reports

A **Roads Department** dated 20<sup>th</sup> December 2021 has been provided, which expresses no objection to the development, subject to a number of recommended conditions regarding the roadside layout.

### 3.3. Prescribed Bodies

3.3.1. None consulted.

### 3.4. Third Party Observations

3.4.1. The Planning Report indicates no third-party submissions were received.

## 4.0 Planning History

**2250571:** Permission granted on 30<sup>th</sup> June 2022 for retention of domestic garage and 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. 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.

5.1.2. According to Map 7.1.1 'Scenic Amenity' the site is located in an area of 'High Scenic Amenity'. Section 7.1.1 of the development plan discusses landscape designations. For areas of High Scenic Amenity, it 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. Policy NH-P-7 is relevant to the development. It states: -

**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.

## 5.2. Natural Heritage Designations

5.2.1. The site is not located within or adjacent to any designated European site, the closest such site being the River Finn SAC (Site Code 002301), which lies c.5.7km east.

## 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: -

- The appellant's house, west of the subject site, was constructed in 1972 and Donegal County Council marked out the site and erected boundary fences on both sides of the site. In 1994 the appellant constructed a boundary wall within the confines of the property (which includes the western boundary of the subject site that is the subject of this appeal).
- Ownership of the wall was not contested until 2021. The applicants have now applied to retain boundary walls and have relied on a map that is not conclusive as regards site boundaries.
- Photographs are provided, which are intended to demonstrate that the wall is located on the appellant's property.
- Another boundary error between the appellant and his west-adjointing neighbour has been resolved by agreeing to a Deed of Rectification and Transfer (attached as an appendix to the appeal).

## **6.2. Applicant Response**

6.2.1. None received.

## **6.3. Planning Authority Response**

6.3.1. The Planning Authority made a submission on the appeal on 24<sup>th</sup> August 2022, the contents of which can be summarised as follows: -

- Ownership of the lands in question was clarified at the AI stage and the Planning Authority was satisfied, following the AI response, that the applicant had satisfactorily demonstrated legal title.
- Further dispute regarding ownership is a legal matter, outside the remit of the planning system.
- The Board is requested to uphold the decision to grant permission.

## **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;
- Site ownership;
- Impact on neighbouring property; and
- Appropriate Assessment

### 7.2. Principle of Development

7.2.1. I am satisfied that the proposed development is consistent with the established residential use of the site.

### 7.3. Site Ownership

7.3.1. The appellant submits that he constructed a concrete wall within the confines of his property in 1994 and that ownership of the wall was not contested until 2021. He also questions the accuracy of mapping provided by the applicants with the application and references other issues with boundary mapping of his property.

7.3.2. While it is not stated directly within the appeal, it is evident that the appellant's objection to the proposed development relates to the wall on the western boundary of the subject site, which is at the shared boundary with the appellant's property.

7.3.3. Section 5.13 of the *Development Management Guidelines* (DOEHLG, 2007) provides detailed guidance on the issue of land ownership disputes within planning applications, outlining that the planning system is not appropriate for resolving land disputes and that these are ultimately matters for the Courts. Further, it is advised that permission should only be refused on the basis of land ownership, where it is clear that the applicant does not have sufficient legal title.

7.3.4. In this instance there is clearly a dispute as to whether the subject wall lies on land within the applicant's or appellant's control and this has included the submission of mapping by both parties which it is claimed demonstrates ownership by one or other party. I have given consideration to the information provided by both parties,

including the aforementioned mapping, and I consider the matter of ownership is unclear. As the appellant submits, the map provided by the applicant includes a caveat that identified boundaries are 'not conclusive' but, equally, the map provided by the appellant is not of an official nature and is, in my view, similarly inconclusive.

7.3.5. In the context of the advice provided by the *Development Management Guidelines*, I consider it has not been clearly demonstrated that the applicant does not have sufficient legal title. In accordance with Section 5.13 of the Development Management Guidelines, I consider a refusal of permission on this basis would therefore be unjustified.

#### **7.4. Impact on Neighbouring Property**

7.4.1. The subject walls are of a stepped nature and varying length.

7.4.2. The wall at the western site boundary spans the entire depth of the property and measures 1.2m high at its northern end, adjacent to the L-6114, and 0.62m high at its southern end, adjacent to the L-2434. It has a maximum height of c.1.5m.

7.4.3. The wall at the eastern site boundary is of reduced depth, projecting from the north site boundary to a point 4.7m to the rear of the house. It measures 1.67m high at its northern end, adjacent to the L-6114, and 2.5m high at its southern end. The wall is highest to the rear of the applicant's house.

7.4.4. For the east-adjointing property, the wall has the effect of providing a screening barrier between gardens, given the increased height in this area. I am satisfied that the wall has a limited impact on the amenity of the east-adjointing occupiers and I consider it is acceptable. I noted on my visit to the site that the remaining shared boundary section comprises a c. 2m high timber fence and coniferous tree arrangement.

7.4.5. For the west-adjointing property, the wall does not provide any privacy screening value, given its reduced height. In this respect I noted on my site visit that the subject site contains coniferous trees along the shared boundary, which have the effect of providing privacy between properties. Boundary walls such as this, between properties, are commonplace and I am satisfied that the wall does not have any material impact on the amenity of the adjoining occupiers and I consider it is

acceptable. I note in this respect that the appellant has not expressed any concern regarding impacts on their residential amenity.

## 7.5. **Appropriate Assessment**

- 7.5.1. The site is not located within or adjacent to any designated European site, the closest such site being the River Finn SAC (Site Code 002301), which lies c.5.7km east.
- 7.5.2. Having regard to the nature and scale of the proposed development, which is small-scale in nature and within the curtilage of a house and is distant from any Natura 2000 sites, I do not consider that any Appropriate Assessment issues arise and I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 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**

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

## 10.0 **Conditions**

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| 1. | The development shall be retained 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 |
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|  | <p>commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity</p> |
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Barry O'Donnell  
Planning Inspector

1<sup>st</sup> March 2023.