



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314417-22

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<b>Development</b>	Refurbishment and extension to the side of house.
<b>Location</b>	105 Ashlawn, Letterkenny, Co. Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2250764
<b>Applicant(s)</b>	WRE Premier Developments Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	William & Sheila Anderson.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	2 <sup>nd</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 0.063ha and is located at 105 Ashlawn, in the Ballyraine area of Letterkenny.
- 1.2. The site contains a detached two-storey, six-bedroom house. It is enclosed on its north-west and south-east site boundaries by tall, mature leylandii trees and the front boundary is open.
- 1.3. Ashlawn is a low-density development of detached and semi-detached houses that is accessed from primarily from Gortlee Road but which also has a secondary access from the R940 Ballyraine Road. The Gortlee Road access is a wide priority junction, whereas the R940 is narrow, signal controlled junction.
- 1.4. The Atlantic Technological University Donegal campus is located on the opposite site of the R940 Ballyraine Road.

## 2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the refurbishment and extension of an existing house.
- 2.2. The extension has a stated gross floor area of 134sqm and involves rearrangement of the ground floor layout and the provision of additional bedrooms at first floor level (7 bedrooms total within the house).

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority granted permission on 28<sup>th</sup> July 2022, subject to 6 No. conditions.

### 3.2. Planning Authority Reports

- 3.2.1. Planning Reports dated 14<sup>th</sup> June 2022 and 22<sup>nd</sup> July 2022 have been provided. The first report does not express any concern regarding the design of the proposed development, but identifies non-compliance with *Quality Housing for Sustainable*

*Communities* (2007) in respect of the internal layout of the house. The report recommends a request for AI in respect of the issue. The second report followed receipt of the AI response. It summarises and responds to the AI submission and recommends that permission be granted, subject to 6 No. conditions.

### 3.2.2. Other Technical Reports

A **Municipal District Engineer** report dated 18<sup>th</sup> May 2022 has been provided, which expresses no objection to the development.

### 3.3. Prescribed Bodies

3.3.1. 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 submission was received, the issues raised within which can be summarised as follows: -

- Failure to address previous reasons for refusal,
- Scale and design,
- Use as student accommodation,
- Car parking and road safety,
- Waste management.

## 4.0 Planning History

**2051756:** (ABP Ref. ABP-309892-21) The Board refused permission on 4<sup>th</sup> February 2022 for refurbishment of the house, construction of an extension and all associated site works. The Board refused permission for 1 reason as follows: -

*'It is considered given the physical elements of the proposed development as set out in the submitted plans and particulars, including the increased car parking along the frontage, the applicant has not demonstrated that the proposed development would not have a negative impact on public safety and pedestrian convenience by reason*

*of traffic hazard, and would not lead to serious injury to the residential amenity of the area. The proposed development would not, therefore, be in accordance with the proper planning and sustainable development of the area.*

*Furthermore, it is considered that the applicant has explicitly applied for planning permission to refurbish and extend a 'dwelling house', as indicated in the public notice, providing for a residential use. However, the intended use of the proposed development is to provide student accommodation, which is a commercial form of residential accommodation, subject to differing material planning considerations, which has not been referred to in the public notice. As such, the intended use of the proposed development would not be consistent with the public notice.'*

Relevant nearby planning records

**2250193:** (ABP-314245-22) Site at Oakland Park, Letterkenny - Current appeal relating to the construction of an extension consisting of 10 ensuite bedrooms and all associated works, to facilitate student accommodation.

## **5.0 Policy Context**

### **5.1. Donegal County Development Plan 2018-2024**

- 5.1.1. Part C of the development plan contains objectives and policies for the towns within the county, including Letterkenny. It also includes land-use zoning maps for each of the towns, with Map 12.1B relating to Letterkenny.
- 5.1.2. The subject site is identified on the zoning map as subject to the 'Established Development' zoning, with an objective '*To conserve and enhance the quality and character of the area, to protect residential amenity and allow for development appropriate to the sustainable growth of the settlement subject to all relevant material planning considerations, all the policies of this Plan, relevant National/regional policy/guidance including environmental designations and subject to the proper planning and sustainable development of the area.*'
- 5.1.3. Section 6.2 of the development plan contains policies and objectives in relation to urban housing. The following are relevant to the subject appeal: -

**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.

5.1.4. Two car parking spaces per house are required based on Table 6 in Appendix 3 of the Development Plan.

## 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 Lough Swilly SAC (Site Code 002287), which is c.675m 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: -

- Scale and design
  - The development is likely to give rise to an increase in population density on the site.
  - The scale and design proposed are excessive and out of proportion with other housing in the area.

- The area is attractive to student renters and the applicant currently rents property to student renters. Consideration should be given to development in the context of occupation by students.
- The proposed internal layout provides for an additional 2 bedrooms to be provided.
- Road safety and traffic management
  - The lower Ashlawn entrance is unfit for purpose and is traffic is managed via traffic lights given the substandard width.
  - The development will contribute to a traffic hazard.
  - There is a longstanding parking issue in the estate, related to student renting in the estate.
  - The above issues are contrary to objective UB-P-27 of the development plan.
- Residential amenity
  - The development will affect residential amenity of residents in the area, given inevitable parties and socialising and associated noise and anti-social behaviour.
- The Planning Authority has granted permission for student accommodation within 200m of the site and this approval has been appealed to the Board also.

## 6.2. Applicant Response

6.2.1. The applicant made a submission on the appeal on 14<sup>th</sup> September 2022, prepared on the applicant's behalf by Michael Friel Architects. The contents of the submission can be summarised as follows: -

- Public safety and traffic hazard
  - The proposal provides for additional accommodation in an area which has an under-supply of housing.
  - Proposed parking is in accordance with the requirements of the development plan, which requires at least 2 spaces. Alleged parking shortages and

congestion in the estate will not be exacerbated by the development, in view of compliance with the development plan.

- There is no increased risk to public safety or likelihood of a traffic hazard being created.
- The Planning Authority assessed the development and determined that it is acceptable.
- Residential amenity
  - It is speculative to suggest that the house will be let to students. The house will be available to families or individuals requiring accommodation.
  - There will be no loss of amenity to the area.
  - The majority of houses in the estate are available for rental purposes, which reflects that the estate is popular with students.
  - The proposal complies with relevant policies of the development plan and meets objectives of regional and national planning guidance.
- Planning Authority decision
  - The site is located in the town centre, where planning policies seek the provision of high density development.
  - Achievement of ambitious population targets requires compact growth.
  - The Planning Authority gave adequate consideration to all potential impacts on the area and decided to grant permission.

### **6.3. Planning Authority Response**

6.3.1. None received.

### **6.4. Observations**

6.4.1. None.

## 6.5. Prescribed Bodies

- 6.5.1. The appeal was circulated to the Department of Culture, Heritage and the Gaeltacht, the Heritage Council and An Taisce. 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;
- Design and residential amenity;
- Impact on neighbouring property;
- Access and parking; and
- Appropriate Assessment.

## 7.2. Principle of Development

- 7.2.1. The applicant has applied for permission for refurbishment and extension of the existing house on the subject site. The existing house is shown by the application drawings to contain 6 No. bedrooms across the ground and first floors, together with a kitchen/dining room, utility, downstairs WC and upstairs bathroom. The proposed extension has a stated gross floor area of 134sqm and involves rearrangement of the ground floor layout and the provision of additional bedrooms at first floor level (7 bedrooms total).
- 7.2.2. The appellants argue that reasons for refusal of appeal Ref. ABP-309892-21 have not been addressed by the applicant. They also express concern that the development will allow for a significant increase in population density on the site and question whether the house will be occupied as student accommodation.
- 7.2.3. I firstly note the appellant concerns regarding the nature of the proposed use of the house and the level of occupancy. Similar concerns were raised as part of previously refused appeal Ref. ABP-309892-21 and in its refusal Order for that appeal, the Board addressed the issue of the intended use of the house, stating as follows: -



*'It is considered that, given the physical elements of the proposed development as set out in the submitted plans and particulars, including the increased car parking along the frontage, the applicant has not demonstrated that the proposed development would not have a negative impact on public safety and pedestrian convenience...Furthermore, it is considered that the applicant has explicitly applied for planning permission to refurbish and extend a 'dwelling house', as indicated in the public notice, providing for a residential use. However, the intended use of the proposed development is to provide student accommodation, which is a commercial form of residential accommodation, subject to differing material planning considerations, which has not been referred to in the public notice. As such, the intended use of the proposed development would not be consistent with the public notice.'*

7.2.4. The applicant has again applied for permission for refurbishment and extension of the existing house on the subject site and does not refer within the public notices to the extended house being intended to serve as accommodation for students. However, the first party appeal response appears to contradict the public notices as the applicant states within it that it is *'the intention of this proposed development, to provide accommodation for persons in need of such accommodation'* and *'this proposal seeks to provide a large rental Dwelling which will lessen the pressures on a small scale on persons seeking accommodation for the purpose of attending the LYIT as this accommodation will be available to any person(s) seeking rental accommodation in Letterkenny.'*

7.2.5. As was set out by the previous Inspector and the Board in its Order to refuse permission, the use of the house as student accommodation or a house in multiple occupancy is a commercial form of residential accommodation and requires consideration of different material considerations to that of a private dwelling house. Further, I note that the Planning and Development Act 2000 distinguishes between permanent residential and student accommodation uses, in defining the latter use as follows: -

*"student accommodation" means a building or part thereof used, or to be used, for the sole purpose (subject to paragraph (b)) of providing residential accommodation to students during academic term times, whether or not provided by a relevant*

*provider (within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012 ), and that is not used, or to be used,—*

*(a) as permanent residential accommodation, or*

*(b) as a hotel, hostel, apart-hotel or similar type accommodation other than for the purposes of providing residential accommodation to tourists or visitors outside of academic term times’.*

7.2.6. However and notwithstanding the above, a student accommodation use is not expressly proposed within the public notices and I consider it would be inappropriate to assess the development on this basis. I have therefore assessed the development as a house extension. In the event of a grant of permission, a condition should be attached requiring the house and extension to be jointly occupied as a single residential unit and shall not be used as student accommodation or any other form of multiple occupancy.

### **7.3. Design and Residential Amenity**

7.3.1. As I have previously outlined, the proposed extension has a stated gross floor area of 134sqm. It involves rearrangement of the ground floor layout, to provide an enlarged kitchen/dining area, snug, home office, living room, plant/utility rooms and an en-suite master bedroom, together with 6 No. bedrooms (2 en-suite) at first floor level. The Board will note that the proposed internal layout was amended at the AI stage, in relation to the size of individual rooms.

7.3.2. Externally, the extension has a two-storey gabled fronted design, which briefly extends the existing ridge level before stepping down at the gable end. The extension projects beyond the front plane of the house by 3.3m and beyond the front plane by 3.6m. A small, flat-roofed single storey/porch extension is also proposed to the front.

7.3.3. Policy UB-P-27 of the development plan states that house extensions should reflect and respect the scale and character of the host house and the wider settlement. The extension is large in the context of the size of the existing house, resulting in an effective doubling of its size, but I do not object to its scale. The site is not located within an architectural conservation area and plot is well concealed on both sides by tall and dense tree coverage. Further, the extension is maintained at or below the

ridge of the existing house and its mass is largely concealed from public views. I am satisfied that the design and scale are in accordance with the requirements of policy UB-P-27.

- 7.3.4. The rear garden area to be retained is unstated but is evident from the site layout drawing that the majority of the existing garden would be retained and this is, in my view, adequate to serve future occupants.
- 7.3.5. Regarding the internal layout, at the AI stage the Planning Authority requested amendments, to ensure compliance with the recommendations of the *Quality Housing for Sustainable Communities* (2007) guidelines, as referenced by the development plan. These requested amendments sought a main living area of 23sqm, an aggregate living area of 57.5sqm and storage space of 14sqm. The revised layout identified exceedances of each in the required areas.
- 7.3.6. The *Quality Housing for Sustainable Communities* (2007) guidelines does not contain any recommendations for the internal layout of a 7-bed house and I note in this respect that the Planning Report dated 14<sup>th</sup> June 2022 states that a pro-rata approach was taken to the issue. I also note that the applicant has not objected to this approach. The Planning Authority's approach seems to me to be a sensible one and, having considered the proposed internal layout, I am satisfied that all bedrooms and living accommodation within the house are reasonably sized and would provide a reasonable level of amenity for future residents.

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

- 7.4.1. The proposed extension incorporates a single window opening on the west-facing elevation, which serves a proposed bathroom. A single rear-facing first floor window is incorporated, which will have an angled view of neighbouring gardens but, this is similar to the existing arrangement and I am satisfied that any overlooking arising would not be significant or unacceptable.
- 7.4.2. The appellants express concern that the development will affect the amenity of residents in the area, with reference to the likelihood of parties and socialising and with associated noise and anti-social behaviour.
- 7.4.3. I acknowledge that noise and anti-social behaviour would be disruptive to residential amenity in the area, but I do not see that such issues are an inevitable consequence

of the proposed extension. In any case, the Planning Authority has powers under separate codes in respect of noise nuisances, should such issues arise. I do not consider it would be justified to refuse permission for the proposed development on the basis of these concerns.

## **7.5. Access and Parking**

- 7.5.1. Ashlawn is accessed primarily from Gortlee Road, to the north of the site, but there is a secondary access to the south-west, from the R940 Ballyraine Road. The Gortlee Road access is a wide priority junction, whereas the R940 is narrow, signal controlled junction.
- 7.5.2. The appellant argues that the R940 entrance is unfit for purpose and that the development will contribute to a traffic hazard. Concerns are also expressed, that there is a longstanding parking issue, related to student renting in the estate.
- 7.5.3. I share the appellants' concerns regarding the condition of the R940 access, which is narrow and provides limited forward visibility. However, in saying this, it is evidently not the primary access to the housing estate and I am satisfied that the Gortlee Road access is adequate to accommodate development traffic. I am also cognisant that the proposal is for a house extension, which I consider is unlikely to give rise to a material increase in traffic movements within the estate. In view of the availability of this access, I consider it would be unjustified to refuse permission on the basis of concerns over the creation of a road safety hazard.
- 7.5.4. Regarding parking, the subject site is provided with an off-road driveway, which is adequate to accommodate 2 cars. The Ashlawn estate road layout in the area of the site provides a pedestrian footpath and a number of 'no parking' bays on the same side as the subject site, whilst there is a double yellow line on the opposite side of the road. At the time of my site inspection there were a number of cars parked on the street.
- 7.5.5. As part of the development, the applicant proposes to amend the front garden layout, to provide 3 No. parking spaces adjacent to the north-east site boundary.
- 7.5.6. The development plan requires that parking should be provided at a rate of 2 spaces per house.

7.5.7. The proposed parking arrangement exceeds the requirements of the development plan and I consider 1 space should be omitted. The thrust of national planning policy is that parking standards in urban areas should be based on performance criteria, in order to achieve targeted growth and, in this instance, Ashlawn is located adjacent to the Atlantic Technological University and is within walking distance of the town centre. The omission of a parking space can be controlled by condition.

7.5.8. I acknowledge the appellants' concerns regarding parking issues in the estate, but I am satisfied that there are powers available to the Planning Authority to address illegal parking.

## 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*

7.6.5. The development is described at Section 2 of this Report. In summary, permission is sought for the refurbishment and extension of an existing house. The subject site is located at 105 Ashlawn, within the urban footprint of Letterkenny.

### *Submissions and Observations*

- 7.6.6. The submissions from the appellant and applicant are summarised as Section 6 of my Report.

### *European Sites*

- 7.6.7. The subject site is not located within or adjacent to any designated European site, the closest such site being Lough Swilly SAC (Site Code 002287), which is c.675m east.

### *Evaluation of Effects*

- 7.6.8. Having regard to the smallscale nature of the proposed development and the separation distance to the nearest European site, I am satisfied that no Appropriate Assessment issues arise, and I am satisfied that the development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### Screening Determination

- 7.6.9. 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. 002287, 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 should be granted for the following reasons and considerations, subject to conditions, as set out below.

## **9.0 Reasons and Considerations**

Having regard to the nature and scale of the proposed house extension and the character and pattern of development within the Ashlawn estate, it is considered that subject to compliance with conditions set out below, the proposed development

would respect the scale and character of both the existing house on the site and other housing in the immediate area, would not seriously injure the residential amenities of the area or property in the vicinity and would not result in the creation of a traffic hazard. The proposed development would therefore be in accordance with the provisions of the Donegal County Development Plan 2018-2024 and would also accord with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The proposed development shall be carried out, in accordance with the plans and particulars lodged with the application, as amended by additional information submitted on 4<sup>th</sup> July 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><b>Reason:</b> In the interest of clarity.</p>
2.	<p>The existing house and proposed extensions shall be jointly occupied as a single residential unit and shall not be used as student accommodation unless authorised by a prior grant of planning permission.</p> <p><b>Reason:</b> To clarify the nature and extent of the permitted development to which this permission relates and to ensure that adequate car parking and services are provided to serve the development</p>
3.	<p>The development shall incorporate a maximum of 2 No. off-road parking spaces. Revised drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interests of visual and residential amenity, traffic and pedestrian safety</p>

4.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health and to ensure a satisfactory standard of development</p>
5.	<p>Site development and building works shall be carried out between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the Planning Authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity</p>

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Barry O'Donnell  
 Planning Inspector

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