



An
Bord
Pleanála

Inspector's Report

ABP-314901-22

Development	Erection of a storage shed for private use and boundary maintenance on lands.
Location	Sruthanreagh, Falcarragh, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2250344
Applicant(s)	Donal Curran.
Type of Application	Permission.
Planning Authority Decision	Grant permission.
Type of Appeal	Third Party
Appellant(s)	Geraldine Gallagher.
Observer(s)	None.
Date of Site Inspection	21 st March 2023.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.43ha and is located in the townland of Sruthanreagh, south of Falcarragh in north-west County Donegal. The site consists of an agricultural plot on the north side of the L-1113.
- 1.2. The site contains the ruins of an old farmhouse or farm building and forms part of a larger holding that is stated to be farmed by the applicant. It is currently accessed via an agricultural access at the southern corner.
- 1.3. An open watercourse routes through the southern part of the site, draining in a north-easterly direction before discharging into the Tullaghbeg River.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the erection of a storage shed.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 22nd September 2022, subject to 4 No. conditions.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports dated 11th April 2022, 28th June 2022 and 19th September 2022 have been provided, which reflect the Planning Authority's decision to grant permission. The first report expressed concern regarding justification for the proposed shed, together with its location and design and also regarding site access proposals. The report recommends a request for additional information in respect of these issues.
- 3.2.2. The second report followed receipt of the AI response. It summarises and responds to the individual AI response items and recommends that the applicant should be required to publish new public notices.

3.2.3. The third report followed a period of further public consultation, following the submission of significant AI. It recommends that permission be granted subject to 4 No. conditions which are consistent with the Planning Authority's decision.

3.2.4. Other Technical Reports

A **Roads Department** report dated 8th April 2022 has been received, which does not express any concern regarding the proposal.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. 1 No. third party submission was received, the contents of which can be summarised as follows: -

- Site ownership.
- Access.

3.4.2. An additional submission was received as part of the significant AI public consultation, which raised similar issues.

4.0 **Planning History**

2051308: Permission was refused on 5th November 2020 for the erection of a domestic shed.

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.

5.1.2. According to Map 7.1.1 'Scenic Amenity' the site is located in an area of High Scenic Amenity. In such areas policy NH-P-7 is relevant to the development stating: -

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 Ballyness Bay SAC (Site Code 001090) which is c.1.4km west.
- 5.2.2. Ballyness Bay is also designated as a proposed Natural Heritage Area (Site Code 001090) and its designated area is similar to that of the SAC in the area of the subject site.

5.3. EIA Screening

- 5.3.1. The proposed development comprises a storage shed with a gross floor area of 113sqm. 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: -
 - Required sightlines cannot be provided without encroaching onto third party lands and no consent is given for same. In the absence of adequate visibility, the development results in the creation of a traffic hazard.
 - The applicant has included third party lands within the application site and has no permission to do so.
 - The access lane leading to the site falls within Folio DL37835 and there is no right of way to use the lane for access purposes.

- The applicant has an alternative means of access available, via a gate/stream crossing.

6.2. Applicant Response

6.2.1. The applicant responded to the appeal on 18th November 2022, in a submission prepared by Gerard Boyle B.Arch. The contents of the submission can be summarised as follows: -

- The map provided by the appellant cannot be relied on to confirm title.
- The applicant has the benefit of right of way over the access route from the public road.
- The required visibility splay has been demonstrated to and accepted by the Planning Authority.
- There is no record of any incident at this location, which would indicate the existence of a traffic hazard.

6.3. Planning Authority Response

6.3.1. The Planning Authority made a submission on the appeal on 15th November 2022, the contents of which can be summarised as follows: -

- The parties do not agree over right of access. The planning system is not the appropriate mechanism for resolving land disputes, which are matters for the Courts.
- There is no requirement for third party lands as part of the provision of required sightlines.
- The Board is requested to uphold the decision to grant permission.

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 appeal in detail, I consider the main planning issues to be considered are:

- Site ownership;
- Principle of development;
- Access; and
- Appropriate assessment.

7.2. Site Ownership

- 7.2.1. The appellant claims that the applicant has included third party lands within the application site and has no permission to do so. This relates to the access lane leading to the site, which the appellant states falls within Folio DL37835 and that there is no right of way for use by the applicant.
- 7.2.2. In responding to the appeal, the applicant states that he has the benefit of right of way over the access route from the public road.
- 7.2.3. 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.
- 7.2.4. There is clearly a dispute as to whether the applicant is entitled to use the existing access route to access the subject site, which has included the submission of Property Registration Mapping. I have given consideration to the information provided by both parties, including the aforementioned mapping, and I consider the matter of ownership is unclear. 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 and, therefore, I consider a refusal of permission on this basis would be unjustified.

7.3. Principle of Development

- 7.3.1. The applicant seeks permission for the erection of a storage shed. The shed has a gross floor area of 113.7sqm and is enclosed on all sides, with an A-roof profile. The elevation drawings show that it has roller door accesses at both ends, with door accesses on both side elevations and 2 No. windows on the east elevation.
- 7.3.2. In its initial planning report, the Planning Authority expressed concern regarding the justification for the development and a request for additional information issued. In response to the request, the applicant stated that the shed is for agricultural purposes and will be used for storage of machinery (tractors, trailer and grass cutting attachment are identified) and other implements required as part of the maintenance of the land. The applicant also provided a statutory declaration, within which he states that it is his intention to use the shed for agricultural purposes.
- 7.3.3. I am concerned that the shed has a domestic/residential character, rather than an agricultural character, and would note that the applicant previously applied for and was refused permission under Reg. Ref. 2051308 for an identically scaled and designed building, which was described as a 'domestic shed'. The Planning Authority expressed similar concerns in its initial report and AI request.
- 7.3.4. Whilst I accept the need to provide for secure storage of the aforementioned machinery, it is my view that the proposed shed design would jar on this site, particularly in the revised proposed location, which is exposed to views from the adjacent road. The applicant's AI response submission seems to indicate that a steel-built shed would not provide a sufficiently dry environment for the stored machinery but, subject to adherence to appropriate standards during construction, I do not agree that an issue of water ingress would be likely to arise.
- 7.3.5. In order to protect the visual amenities and rural character of the area, I consider the proposed shed design requires reconsideration. I do not consider it would be appropriate to secure such redesign through condition and thus recommend that permission be refused on this basis.

7.3.6. Should the Board not share my concerns regarding the appearance and character of the building and be minded to grant permission, I would recommend they give consideration to requiring that it be relocated to the originally proposed location, i.e. to the north (rear) of the ruins, where there is a level of screening from public views.

7.4. Access

7.4.1. Access was initially proposed via a new access at the southern corner of the field but this was reconsidered as part of the AI response, following a request from the Planning Authority to demonstrate sightlines of 2.4m x 160m in both directions. The applicant now proposes to take access from an existing access to the east, which provides access to other property.

7.4.2. The site layout drawing provided at the AI stage identifies sightlines of 70m in both directions from the access and a traffic survey was also provided, which states that an average speed of c.61km/h was observed over a 2.5 hour survey period.

7.4.3. The speed limit on this section of the L-1113 is unclear however; I note that that the Planning Authority's request for 160m sightlines equates to a design speed of 80km/h.

7.4.4. The lane which the applicant proposes to utilise for access is very narrow, shown on the site layout drawing to be c.3m wide and the L-1113 is itself narrow in the area of the access, measuring c.4.5m wide. I am concerned that it is likely to be difficult to manoeuvre farm vehicles onto the lane and may result in the creation of a traffic hazard.

7.4.5. Further, I noted on my visit to the site that visibility from junction of the access and the L-1113 is heavily impeded by the stone walls that line both sides of the access and by a mature tree stated by the appellant to be located within her property. As the appellant points out, there is very limited visibility in both directions, from a 2.4m setback from the L-1113, with the result that vehicles are required to encroach onto the road in order achieve the required visibility.

7.4.6. I also noted on my site visit that visibility from the initially proposed access is similarly impaired by a boundary wall, which heavily restricts southward views.

7.4.7. From the information available to me, I thus conclude that the applicant has failed to identify that adequate sightlines can be achieved in both directions from the site

access. In the absence of same, I consider the development is likely to endanger the safety of other road users and recommend that permission be refused on this basis.

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 Ballyness Bay SAC (Site Code 001090) which is c.1.4km west.
- 7.5.2. The proposed development comprises a storage shed with a gross floor area of 113sqm, accessed via an existing access from the L-1113. There is an open watercourse c.70m from the proposed shed, which drains eastward into the Tullaghbeg River and which ultimately drains into Ballyness SAC, at Falcarragh.
- 7.5.3. Having regard to the nature and scale of the proposed development, which is small-scale in nature and which is set away from the nearest open watercourse and is distant from the SAC, 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 be refused, for the reasons and considerations outlined below.

9.0 Reasons and Considerations

1. The proposed development is accessed from a private laneway which, by reason of its alignment and relationship to adjacent third-party lands, incorporates inadequate visibility splays that require drivers to enter the junction of the L-1113 in order to attain adequate visibility. The proposed development, which would intensify the use of the laneway by vehicular traffic, is contrary to the requirements of Appendix 3 'Development Guidelines and Technical Standards' of the Donegal County Development Plan 2018-2024 and advice provided within Transport Infrastructure Ireland publication *Rural Road Link Design* (April 2017) and would be likely to endanger public safety by reason of a traffic hazard and

would therefore be contrary to the proper planning and sustainable development of the area.

2. The proposed development, by reason of its form, elevational design and residential character constitutes an incongruous addition to the rural area, which would jar with the character of other agricultural buildings, to the detriment of the rural character and amenities of the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Barry O'Donnell
Planning Inspector

29th March 2023.