



An
Bord
Pleanála

Inspector's Report

ABP-315642-23 Addendum

Development	Demolition of existing dwelling house and construction of a replacement dwelling house, detached garage, septic tank/sewage treatment system and associated site development works.
Location	Kinletter, Ballybofey, Lifford PO, Co.Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	22/51809
Applicant(s)	Margaret Breen
Type of Application	Permission
Planning Authority Decision	Grant, subject to 18 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Patrick Boyle
Observer(s)	None

Date of Site Inspection

9th August 2023

Inspector

Hugh D. Morrison

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1.0 Introduction

- 1.1. The Board considered this case on 30th January 2024. It decided to return the file back to me “for clarification as to the adequacy of the information to establish local need or the need for the same.”

2.0 Summaries

- 2.1. I have reviewed the information received at the **application stage** on the question of local need from the applicant and the Planning Authority. (The objectors did not raise this question in their grounds of objection). I summarise this information below.

Applicant

- 2.2. The applicant submitted a supplementary rural housing application form in which she stated the following:
- She has resided at her current address for in excess of 7 years. Question 28 of the planning application form states what this address is. However, a copy of the answer to this question is not on the file.
 - She states that the proposed dwelling would be her “primary, principal and permanent residence.”
 - She states that she has previously been granted planning permission for a dwelling house on another site. No details of this permission have been forwarded.
 - She states that her housing need comes within the following two categories:
 - A person with a vital link to the rural area by reason of having lived in this community for a substantial period of their lives being 7 years minimum.*
 - A person with a vital link to the rural area by reason of the existence of immediate family members in the community for a minimum period of 7 years.*
 - She indicates that a *bona fide* letter from a local councillor accompanies her application. This letter states that the applicant “has resided in the adjoining townland of Corgary, Ballybofey for over 20 years and now intends to construct a smaller house closer to her daughter Andrea who lives beside the site.”

Planning Authority

- 2.3. Under the heading of the “principle of development”, the case planner’s report acknowledges the applicant’s above cited information. (Reference is made to the absence of any grant of planning permission on another site, which appears to be an error). The following statement is made:

The application is located within a stronger rural area, and it is considered that the principle of residential development has already been established on the subject site, by virtue of the planning history and existing dwelling.

- 2.4. Under Condition No. 2 of the PA’s planning permission, the applicant would be required to enter into a Section 47 agreement, which would require her to be the resident of the dwelling for the first seven years of occupancy.
- 2.5. I have reviewed the information received at the **appeal stage** on the question of local need from each of the parties. I summarise this information below.

Appellant

- 2.6. The appellant states that the applicant has a permanent residence (Land Registry folio DL 42968F) 850m away from the site and so she does not “need” a second home in the locality. He also states that the councillor is incorrect in saying that she wants to downsize as her existing dwelling has a floorspace of 141 sqm, while the proposed one would have a floorspace of 187.5 sqm.

Applicant

- 2.7. The applicant cites NPO 19 of the National Planning Framework, and she states that her proposed dwelling would comply with this Objective insofar as it pertains to the provision of single rural housing in areas beyond urban influence. She reiterates that she lives locally, and that she intends to relocate to reside closer to her daughter, who lives beside the site in a dwelling house permitted under 15/50735. The proposed dwelling would be accessible and of a layout and scale suited to her specific needs.
- 2.8. The applicant states the view that, as there is an unoccupied dwelling on the site, Policy RH-P-3 of the Donegal County Development Plan 2018 – 2024 does not apply. However, Policy RH-P-7 does apply, and it would be complied with.

3.0 Commentary

- 3.1. All parties agree that the applicant resides locally. They differ on whether she has a rural housing need.
- 3.2. The applicant's view is that she does not need to establish such a need, as the proposal is for a replacement dwelling. Nevertheless, reference is made to the "accessibility" that the proposed dwelling would afford to the applicant. This reference is not elucidated upon and so it may simply be a reference to the greater convenience that would be afforded to the applicant through residing next to her daughter as distinct from 850m away.
- 3.3. The PA appears to share the applicant's view, although in attaching Condition No. 2 to its permission, it requires that the applicant reside in the proposed dwelling for the first seven years. This residency condition is normally attached where an applicant has established that he/she has a rural housing need.
- 3.4. The appellant's view is that the applicant does not have a rural housing need as she already resides in a rural dwelling in the neighbouring townland to that of the site. His contention that the proposal would not involve "downsizing" has not been commented upon by the applicant, who simply refers to the "accessibility" that the proposed dwelling would afford.
- 3.5. Ultimately, the question as to whether rural housing need requires to be established in the case of a replacement dwelling comes down to a reading of the Donegal County Development Plan 2018 – 2024. Policy RH-P-7 addresses replacement dwellings. Its fourth criterion states: "The proposed development would otherwise comply with all other relevant policies of the County Development Plan."
- 3.6. Other relevant policies may be understood to include Policy RH-P-2, which begins by stating "It is the policy of the Council to consider proposals for a new rural dwelling which meets a demonstrated need (see Policies RH-P-3 – RH-P-6)..." Policies RH-P-3 – RH-P-5 refer to rural housing need in each of the three types of rural area, with Policy RH-P-3 addressing stronger rural areas such as that of the subject site. (Policy RH-P-6 refers to the refurbishment of existing dwellings/buildings and so the reason for its reference is unclear). Policy RH-P-3 begins by stating that "It is the policy of the Council to consider proposals for prospective applicants in need of

housing within an area defined as stronger rural area...” However, if as in the present case, an applicant is presently residing in a dwelling within a rural area, then that person’s housing need is already being met, and so there can be no justification for granting to him/her planning permission for another dwelling in a rural area, unless exceptional circumstances can be demonstrated. The third criterion of Policy RH-P-3 applies in this respect. It states the following:

Persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location. This policy shall not apply where an individual has already had the benefit of a permission for a dwelling on another site, unless exceptional circumstances can be demonstrated. An exceptional circumstance would include, but would not be limited to, situations where the applicant has sold a previously permitted, constructed and occupied dwelling, to an individual who fulfils the bona fides requirements of that permission...

From the applicant’s submissions, such exceptional circumstances do not appear to pertain in this case.

- 3.7. Alternatively, if the view is taken that in a replacement dwelling situation the established residential use of a site renders the rural housing need of the applicant irrelevant, then the reference to “other relevant policies” would not trigger the need to comply with, in this case, Policy RH-P-3, but only the physical planning aspects of Policies RH-P-1 & RH-P-2. If this view is adopted, then the need to replicate the PA’s Condition No. 2 would not arise.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Hugh D. Morrison
Planning Inspector

19th February 2024