



An
Bord
Pleanála

Inspector's Report ABP 317114-23

Development	Construction of a dormer extension and elevational amendments to existing holiday home.
Location	Saltpans, Rathmullan, Letterkenny PO, Co. Donegal.
Planning Authority	Donegal County Council.
Planning Authority Reg. Ref.	23 50224.
Applicant(s)	Letitia McElholm.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party.
Appellant(s)	Colm & Roisin Byrne.
Observer(s)	None.
Date of Site Inspection	23 rd August 2023.
Inspector	Aisling Dineen.

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
4.0 Planning History.....	4
5.0 Policy and Context.....	4
5.1. Development Plan.....	4
5.2. Natural Heritage Designations	5
5.3. EIA Screening	6
6.0 The Appeal	6
6.1. Grounds of Appeal	6
6.2. Applicant Response	8
6.3. Planning Authority Response	8
6.4. Observations	8
7.0 Assessment.....	8
8.0 Recommendation.....	11
9.0 Reasons and Considerations.....	11
10.0 Conditions	11

1.0 Site Location and Description

- 1.1. The site is located on the western side of the Lough Swilly inlet and approximately 4.5 km north of Rathmullan and c.20 km northeast of Letterkenny in Co. Donegal. The character of the area is rural and there is a significant amount of interspersed rural dwellings in the area. The general area is particularly scenic with lands to the east side of the R247/R268 designated as being of Especially High Scenic Amenity.
- 1.2. The site is accessed off the east side of the R268 regional route via a narrow laneway, which also serves the adjacent dwelling to the west. (The said dwelling to the west is under ownership of the appellant and there is an ongoing dispute over boundaries/access regarding both properties). The remaining properties situated to the northeast are accessed via a separate access point off the R268.
- 1.3. The subject site contains a dwelling unit with roof level accommodation. There is a small garage in the northeast corner of the site and a paved area to the rear and north west side of the dwelling.

2.0 Proposed Development

- 2.1. It is proposed to construct a box dormer window, which is to be clad in steel, on the northwest elevation of the existing dwelling. An existing window at ground floor level is also proposed to be reconfigured at ground level on the northeast elevation. On the southeast elevation it is proposed to close up an existing door way and a rendered wall finish is to be established in lieu. The existing window beside the said doorway is to be reconfigured also. Three roof lights are proposed on the southeast elevation.

3.0 Planning Authority Decision

3.1. Decision

The planning authority made the decision to grant planning permission on the 20th day of April 2023, subject to 3 No Conditions.

The Chief Executive's decision reflects the planner's report.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report states that the proposal amounts to 7 sq. m. extension and elevational amendments to an existing holiday home. The report considers the objection raised regarding ownership issues and states that disputes over land boundaries is a civil matter and Section 34 (13) of the Planning and Development Act, 2000, as amended, is quoted. The report states that the dispute over land boundaries relates to part of the access and a garden area west of the subject dwelling. The report states that this issue is currently before the courts.

3.2.2. Other Technical Reports

Area Engineer's Report

No objections subject to standard drainage and roadside conditions.

4.0 Planning History

Planning Register Reference Number: 98/574 pertains to the grant of planning permission for a one and a half storey dwelling house and septic tank.

Planning Register Reference Number: 06/50055 pertains to the grant of planning permission for extension to existing dwelling.

5.0 Policy and Context

5.1. Development Plan

County Donegal Development Plan 2018-2024

The site is located in an area of Especially High Scenic Amenity (EHSA).

RH-P-2

It is the policy of the Council to consider proposals for a new dwelling which meets a demonstrated need providing the development is of an appropriate design quality, integrates successfully into the landscape, and does not cause a detrimental change to, or further erode the rural character of the area. In considering the acceptability of the proposal the Council will be guided by the following considerations.

1. The proposed development shall avoid the creation or expansion of a suburban pattern of development in a rural area.
2. The proposed dwelling shall not create or add to ribbon development.
3. The proposed dwelling shall not result in a development by its positioning, siting or location would be detrimental to the amenity of the area or of other rural dwellings or would constitute haphazard development.
4. The proposed dwelling will be unacceptable where it is prominent in the landscape, and shall have regard to Policy T-P-15.

RH-P-9

It is a policy of the Council to seek the highest standards of siting and architectural design for all new dwellings constructed within rural areas and the Council will require that all new rural dwellings are designed in accordance with the principles set out in Appendix 4 of the County Development Plan, entitled 'Building a House in Rural Donegal – A Location, Siting and Design Guide'.

NH-0-7

Seeks to protect the areas of especially high scenic amenity from intrusive and unsympathetic developments.

NH-P-13

It is the policy of the Council to protect, conserve and manage landscapes having regard to the nature of the proposed development and the degree to which it can be accommodated into the receiving environment. In this regard the proposal must be considered in the context of the landscape classifications and the views and prospects contained within this plan as illustrated on Map 7.1.1 "Scenic Amenity".

5.2. Natural Heritage Designations

Lough Swilly Special Area of Conservation Site Code 002287 and Lough Swilly SPA Site Code 004075 are situated 200 metres east of the site.

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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

- It is submitted that the applicant failed to submit a compliant application and that Donegal County Council should have advised the applicant to submit a valid planning application. It is stated that the applicant failed to indicate her land holding to be marked in blue.
- It is stated that only one site notice was erected adjoining the public road and it is submitted that this was flagged to Donegal County Council on the 6th March. It is stated that given that the applicants holiday home is separated by folio from the rest of her holding that this required a second site notice to be placed immediately adjacent to the house.
- It is submitted that by not outlining lands in blue that the applicant has created the mistaken impression that the land marked in red are the only lands in the applicants' ownership. This is stated to be a misrepresentation of the applicants' lands.
- The applicant's failure to make the extent of land ownership clear should have immediately invalidated the application.
- The appellant's site is situated on a steep incline and there are two retaining walls, which the applicant erroneously has suggested to be boundary walls.
- It is stated that the appellants home was completed in 2004 and under the planning process associated therewith an initial application for the dwelling was refused by planners and health and safety officials as the site was too small (Planning Register Reference Number 99/775). The applicant sold an

enlarged site of c. 0.5 acres in order to provide a compliant site to the appellants predecessors.

- Maps showing the appellants folio, ownership and parameters of dwelling and garden are included under the appeal.
- It is stated that a law firm investigated the applicants 3 - part folio and the appellants predecessor's folio. The same law firm then challenged the appellants ownership to the lower part of the garden and issued legal proceedings against the appellant alleging that a mapping mistake erroneously transferred a greater area than the sold 0.5 acres. It is stated that the appellants predecessors would never have been granted planning permission had the site not been enlarged.
- Concern is raised regarding the stated mistake that the applicant asserts ownership of one third of the appellants garden, and that this can be perceived as Donegal County Council supporting this position.
- It is stated that the applicant has no more than an informal right of way to pass over the appellant's land.
- It is stated that the appellant continues to attempt to resolve the situation amicably.
- The appellants are unclear regarding the location of the septic tank presented under 23/50224 and whether it is in accordance with 98/574 and have queried this with Donegal County Council. Additionally, despite a certificate of compliance with planning provided with the dwellings title, Donegal County Council informed the appellant's that their septic tank was not positioned in accordance with its parent permission.
- A list of planning histories for the area is provided.
- It is requested that the Appeal Fee be refunded and it is requested that no conflicted Donegal County Council law firm be granted leave to be involved in the subject appeal.

6.2. Applicant Response

- None

6.3. Planning Authority Response

- Contents of the appeal are noted.
- The planning authority wish to rely on the content of the planner's report dated 6th April 2023.
- No further comments.

6.4. Observations

- None

7.0 Assessment

7.1. Having examined all the application and appeal documentation on file and having regard to the relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and the planning authorities' grant of permission and I am satisfied that no other substantive issues arise. AA also needs to be considered. The main issues, therefore, are as follows:

- Validation
- Site Boundaries/Ownership
- Visual & Residential Amenity
- Effluent Disposal
- Appropriate Assessment

7.2. Validation

7.3. The appellant contends that the subject planning application should have been invalidated regarding site notices and regarding the demarcation of lands in the ownership of the applicant on maps/documents submitted.

- 7.4. The planning authority is the appropriate validation authority and has made the decision that the application was valid. I note that the planners report states that '*A site notice was erected at the road side boundary and the house*'. I am satisfied with the decision that the application was a valid one regarding site notices.
- 7.5. Regarding the demarcation of lands, the planners report states that plans for the site, the subject of planning permission, are marked in red and are to the satisfaction of the planning authority. I concur with the planning authority in its assessment that the planning application was deemed to be valid.
- 7.6. Site Boundaries/Ownership
- 7.7. A substantive element of the subject appeal relates to and revolve around a boundary dispute, which appears to be ongoing for a considerable time period. The issue of right of way is also raised. The planner's report correctly notes that 'Disputes over adjoining land boundaries is a civil matter'. The planning report also states that the issue is currently before the courts.
- 7.8. The appellant under the appeal submission raises concern that a grant of planning permission gives the perception that Donegal County Council supports the boundary situation, which is allegedly not mapped correctly. I do not support this point of view as the planning authority merely make a decision on the planning merits of any given application. The Planning and Development Act 2000 (as amended) is clear that a person, without legal authority, cannot develop land solely based on a grant of planning permission:
- Section 34 (13) of the Planning and Development Act 2000 (as amended) states:
- (13) A person shall not be entitled solely by reason of a permission under this section to carry out any development.
- 7.9. Furthermore, in relation to boundary disputes it may be noted that the Development Management Guidelines (paragraph 5.13) also makes the point that the planning system is not designed to resolve disputes about title to land and that section 34(13) of the Act provides that a person is not entitled solely by reason of a permission to carry out development. I conclude therefore that the proposed development should not be refused on the basis of a dispute in relation to site boundaries.

7.10. Visual & Residential Amenity

7.11. Regarding the proposed design the most significant aspect of the proposal is the construction of a box dormer on the northwest elevation to serve the first floor living room. The subject box dormer is proposed to be clad in steel. Other modifications proposed include the re-configuration of two windows and the closing up of one window along with the infill of an existing door way and the introduction of roof lights. Having consulted with the relevant policies in the Donegal County Development Plan 2018 -2024 and with the Design Guide under Appendix 4, Part B, of the said plan, I am satisfied that the proposal would be compliant with said policies and would not detract from the visual amenities of the area.

7.12. With regard to residential amenity, I concur with the planner's report, in that given the separation distances between the subject dwelling and the neighbouring dwellings and in addition, having regard to the orientation of the box window relative to adjacent dwellings, there are no issues relating to overlooking of adjacent properties or loss of privacy. Consequently, I consider that there will be no significant impacts on the residential amenities of adjacent properties, such that depreciation of adjacent properties would occur.

7.13. Effluent Disposal

7.14. The proposed extension is of minimal scale and there is no increased occupancy proposed, therefore there is no additional organic loading proposed. I am satisfied that no issues arise in this regard.

7.15. Appropriate Assessment

Having regard to the limited nature of the proposed development and the nature of the receiving environment, which comprises an existing established dwellinghouse and adjacent established residential development and the proximity to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that planning permission be granted for the reasons and considerations set out below and subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the scale, form and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried 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>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.</p> <p>Reason: In the interest of public health.</p>

'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.'

Aisling Dineen
Planning Inspector
11th September 2023