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## Inspector's Report ABP317537-23

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<b>Development</b>	Construction of a house and domestic garage with on-site sewage treatment system and all associated site works
<b>Location</b>	Ballyarrell, Killygordon, Co. Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	23/50215
<b>Applicant</b>	Aisling Browne.
<b>Type of Application</b>	Planning permission
<b>Planning Authority Decision</b>	Conditional grant
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	Damian McElchar
<b>Observers</b>	None
<b>Date of Site Inspection</b>	22 <sup>nd</sup> December 2023
<b>Inspector</b>	Trevor Rue.

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## **1.0 Site Location and Description**

- 1.1. The appeal site is located on low-lying agricultural land about 10.6 kilometres to the south east of Stranorlar, 1.8 kilometres to the south east of Killygordon and 8.4 kilometres to the southwest of Castlefinn.
- 1.2. The rectangular site, with a stated area of 0.22 hectares, occupies part of the frontage of a field that extends to 3.28 hectares. There is a mature hedgerow on the western site boundary which adjoins a minor road L-3174-1. The other site boundaries are undefined.
- 1.3. There is a series of three road-frontage dwellings to the south of the site. A linear right of way (ROW) separates the site from the closest residential plot, which is bounded to the north by a hedge and fence. There is a field gate at the road entrance to the ROW. A laneway runs north eastwards from the northern end of the field which contains the appeal site. A dwelling and shed are positioned between the local road and the laneway. There is a two-storey dwelling on the opposite, western side of the road.

## **2.0 Proposed Development**

- 2.1. Permission is sought for a dwelling of single-storey construction with a floor area of 241.35 square metres and a ridge height of 6.124 metres. Revised plans show a finished floor level (FFL) 0.7 metres above the adjacent road and 1 metre above that of the nearest dwelling to the south.
- 2.2. In plan form the dwelling would be rectangular, with several protrusions. The principal elevation would face the road. Blue/black slates would be used on the roof. The walls would have a smooth plaster finish and the gables of the outshots would be faced in stone. The domestic garage would be placed to the rear of the site. The revised layout shows a road access at the south-western corner of the site.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 15<sup>th</sup> June 2023, Donegal County Council decided to grant permission subject to 16 conditions, including conditions relating to occupancy, visibility splays and drainage.

## 3.2. Planning Authority Reports

### Planning Reports

3.2.1. The **planner's reports** of 3<sup>rd</sup> April and 6<sup>th</sup> June 2023 provided the reasoning for the authority's decision. She described the site and the proposed development, summarised the responses of internal consultees and the key points raised in third party submissions and set out the planning history and the policy context. Among the main issues she identified were the principle of development, siting, design, impact on residential amenity, road safety and flooding.

3.2.2. The planner reached the following conclusions relevant to these matters:-

- The principle of development has previously been accepted. The applicant is proposing to build on lands formerly owned by her father.
- The proposed development would not involve ribboning. The dwelling to the north is located on a bend in the road and the proposed dwelling would be only the fourth in a row over a short distance. Further development in the vicinity would be treated as ribboning and would not be favourably considered.
- The proposed house type is acceptable in terms of scale, character, ridge height and landscaping.
- The FFL shown in the application as submitted was 2.5 metres above a temporary benchmark (TBM) on the road at the north-western corner of the site. The revised FFL of 0.7 metres is consistent with what was proposed in the previous outline application and is acceptable.
- Having regard to the proposed separation distance, the proposed dwelling would not result in overlooking or overshadowing of neighbouring dwellings.
- A traffic survey was submitted with the application. It recorded 17 vehicular movements between 15:30 and 17:30 on Monday, 13<sup>th</sup> August 2018. The average recorded speed was 42.29 kilometres per hour (km/h) and the 85<sup>th</sup> percentile speed was 49.76 km/h. Accordingly, reduced vision lines of 70 metres instead of 160 metres are acceptable. The written consent of a third party to achieve and maintain the vision lines has been submitted.

- It is now proposed that surface water would drain into an existing land drain to the north west of the site. Third party consent has been provided.

#### Other Technical Reports

3.3.1. The Council's **Area Roads Engineer** stated that there is a flooding issue in this area and a new 300-millimetre piped drain is needed. The consent of the farmer would be needed to bring the new storm drain through his lands on the opposite side of the county road. A cattle grid and gully should be installed at the site entrance.

3.3.2 **Uisce Éireann** specified conditions to be attached to any grant of planning permission.

3.3.3 No response was received from the Council's **Environmental Health Officer**. However, a positive report was received in respect of a previous application for planning permission on the subject lands (18/51483).

## 4.0 Planning History

4.1. **18/51483**: On 19<sup>th</sup> December 2018, outline planning permission was granted to Gary Browne for a dwelling on the appeal site, subject to 17 conditions. One of those conditions required provision of permanent visibility splays of 70 metres in both directions from a point 2.4 metres back from the road edge at the vehicular entrance.

4.2. **21/51735**: The present applicant sought permission consequent on the grant of outline permission for a dwelling on the appeal site. The Council requested the applicant to provide information on storm water disposal, land ownership and landscaping. The application was deemed withdrawn on 22<sup>nd</sup> June 2022.

4.3. **15/50953**: On 10<sup>th</sup> September 2015, permission was granted to the appellant for a dwelling on the western side of the local road, opposite the present appeal site.

## 5.0 Policy and Context

### 5.1. Development Plan

5.1.1 Map 6.2.1 of the County Donegal Development Plan 2018-2024 indicates that the appeal site is in a Stronger Rural Area. Policy RH-P-3 applies in such areas. It requires applicants for planning permission for dwellings to demonstrate that they comply with one or more criteria. One of these criteria is that they have a vital link to the rural area by reason of having lived in this community for a substantial period of

their lives (seven years minimum), or by the existence in the rural area of long established ties (seven years minimum) with immediate family members.

5.1.2. One of the requirements of Policy RH-P-2 is that a proposed dwelling shall not create or add to ribbon development. The general definition of ribbon development set out in the Plan is five houses on any one side of 250 metres road frontage.

5.1.3. Policy RH-P-9 seeks the highest standards of siting and architectural design for all new dwellings constructed within rural areas.

5.1.4. Table 3 in Appendix 3 to the Plan indicates that for a single access on to a non-National rural road with a speed of 70 km/h, the required vision lines are 120 metres in each direction (that is the Y-distance) from 2.4 metres back from the point of access (the X-distance). Where the speed is 50 km/h, the Y-distance is 70 metres. For a speed of 42 km/h, the Y-distance is 50 metres.

## **5.2. Natural Heritage Designations**

5.2.1. The appeal site is not subject to any natural heritage designation but is about 625 metres from the River Finn Special Area of Conservation (SAC).

## **5.3. EIA Screening**

5.3.1. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an environmental impact assessment report and carrying out of an environmental impact assessment may be set aside at a preliminary stage.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- The traffic impact assessment which recommends reduced sightlines is five years old and has not been redone.
- The appellant owns the laneway to the north of the appeal site and a Mr McLaughlin owns the land to the north of the laneway. When the layout plan was revised, boundaries to the north of the site were changed. By overlaying a digital survey on an aerial image, it can be seen that the proposed sightlines

would cross these third party lands. The sightlines approved by the Council are obstructed by a close-board fence and gates about 1.8 metres in height owned by the appellant and by a mature roadside tree and hedgerow owned by Mr McLaughlin. These landowners have not given their written consent.

- The accurate TBM at the road frontage is 21.9 metres and the revised layout plan shows the FFL of the dwelling 0.7 metres above road level. That would result in a FFL of 22.6 metres. A digital and drone survey shows the highest level of the site as 24.2 metres, in the area between the rear of the proposed dwelling and the proposed detached garage. The site would have to be reduced to a minimum level of 22.4 metres to allow for the full excavation and backfilling for paving and other external works. The gable of the house and the garage would be 3.7 metres and 1.6 metres respectively from the northern site boundary. With a ground difference of 1.6 to 1.8 metres between the excavated site and the remainder of the field to the north, details should have been provided of measures to prevent earth falling into the site.
- There would have to be vehicular access to the garage from one side of the proposed dwelling. It is not clear how this would work and, given the restricted separation distances from both gables, some retaining solution must be required. No details have been provided of the southern boundary treatment.
- The appeal site is at best permanently damp and at worst waterlogged. Once it is at capacity, the water has nowhere else to go but on to the road. Currently the maximum level of the ROW is 23.8 metres approximately at its midpoint. There would be a drop into the site of up to 1.2 metres. It is of concern that the proposed drainage pipe, 150 millimetres in diameter, which would run parallel with the southern site boundary, and the proposed 300-millimetre pipe on the public road, would not have the capacity to take all the water.
- It is now proposed that the drain would run northwards along the site frontage then turn through 90 degrees, run parallel with the northern boundary of the appellant's residential property for 90 metres and then discharge into an open stream to the west, which is prone to flooding. No levels are shown for the drain once it leaves the site and no manholes are shown at the places where the pipe would change direction or on the long run to the open drain.

- There is a real risk of water filling the appeal site, flooding the proposed house and garage, the road and the appellant's own home. The proposals would have a detrimental effect on overall flood risk in the area.

## **6.2. Applicant Response**

- At its request, an amended layout drawing was submitted to Donegal County Council. The Council was satisfied with the newly drawn sightlines and didn't require any further information. The site does not infringe on third party lands and the Council did not request any third party consents.
- The Council was satisfied with the amended site boundary and didn't require any further information.
- A Council road engineer specified the work necessary to mitigate any potential flooding risk. The engineer's report satisfied the Planning Department. No further assessments or changes were requested. Implementation of the agreed work is a condition of the planning permission.
- There is no reason why a home cannot be built on the site. It means so much to have planning permission as there are strong family connections in the locality.

## **6.3. Planning Authority Response**

- Sightlines are in accordance with Development Plan requirements and can be achieved without the need for third party consent from the appellants. As a speed of less than 42 km/h has been recorded, a Y-distance of at least 50 metres would be acceptable in lieu of the 70 metres detailed. No existing shrubbery or trees are proposed to be removed, only that of the landowner of the subject site.
- The Council has imposed a strict condition to ensure the planting of a thick hedgerow of native species, including gorse and blackthorn, around site boundaries within the first planting season following completion of the construction works.



- The applicant engaged in extensive discussions with the Roads Department to agree appropriate proposals for surface/storm water disposal. The final discharge point has been identified which addresses issues raised by the appellant. A bond to the value of €3,500 has been imposed to ensure the works are carried out to the required standards.

## 7.0 Assessment

### 7.1. Issues

7.1.1. Having inspected the site and considered in detail the documentation on file for this Third Party appeal, I am satisfied that the proposed development is acceptable in principle at this location and that the design of the proposed buildings is satisfactory. It seems to me that the main planning issues are:

- road safety;
- boundary treatment; and
- flood risk.

7.1.2. I must also consider whether an appropriate assessment (AA) is required pursuant to the European Union Habitats Directive (92/43/EEC).

### 7.2. Road Safety

7.2.1. While the traffic impact assessment is five years old, there is no good reason to suppose that speeds on the L-3174-1 have changed significantly since 2018. As the recorded 85<sup>th</sup> percentile speed was 49.76 km/h, the required Y-distance is 70 metres. The appellant's survey indicates to my satisfaction that it would be impossible to meet this requirement without impinging on third party land. During my site visit, I was able to appreciate that the sightline to the right emerging would be substantially obstructed by a fence and a tree. Following the removal of the hedge that fronts the field which contains the appeal site, a vision line of only about 40 metres would be available for emerging and oncoming vehicles. In my judgement such an access would not be safe and a derogation from standard would not be justifiable. I therefore conclude that the planning application should be refused.

### **7.3. Boundary Treatment**

7.3.1. It is proposed that the garage would be located behind the dwelling and close to the northern site boundary, with its door facing the road. It is unclear from the site layout plan by what route a vehicle entering the site would make its way to the garage and what area of the site would be hard surfaced. It seems inevitable that some retaining structures would be needed but no information is provided in the application about these. If the application is approved, a condition could be imposed requiring more detailed drawings to be submitted for the Council's written approval prior to the commencement of development.

### **7.4. Flood Risk**

7.4.1. At the time of my site visit, which followed a rainy day, the appeal site was damp and the entrance to the ROW waterlogged. I have no good reason to suppose that the solution agreed with the Area Roads Engineer, involving piped drains from the site, alongside the carriageway and through a field to a stream, would not be effective in safeguarding the public road. Any adverse effect on the appellant's property by surface water from the site would be a civil matter between the parties concerned.

### **7.5. Appropriate Assessment Screening**

7.5.1. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom, and the distance from the nearest European site, it is possible to screen out the requirement for the submission of a Natura impact statement and the carrying out of an appropriate assessment at an initial stage.

## **8.0 Recommendation**

8.1. I recommend that the application be refused.

## **9.0 Reasons and Considerations**

9.1. Having regard to Table 3 in Appendix 3 to the County Donegal Development Plan 2018-2024, it is considered that insufficient unobstructed visibility would be available on the northern side of the proposed access and that, in consequence, the proposed development would unacceptably prejudice the safety of road users on the L-3174-1.

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.



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**TREVOR A RUE**

Planning Inspector

27<sup>th</sup> December 2023