



An
Bord
Pleanála

Inspector's Report

ABP-317601-23

Development	Change of house type from that previously granted under planning reference no: 21/50310.
Location	Keeloges, Churchill, Letterkenny PO, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2350160
Applicant(s)	Owen Hegarty & Kathleen McNamee
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party vs. Grant
Appellant(s)	P & E Callaghan
Observer(s)	None
Date of Site Inspection	9 th September 2023
Inspector	Stephen Ward

1.0 Site Location and Description

- 1.1. The site is located approximately 850m east of the rural village of Churchill, and approximately 9km northwest of Letterkenny. It is within an unserviced rural area, and the surrounding area is generally characterised by undulating agricultural land and one-off housing.
- 1.2. The site has a stated site area of 0.3ha. It is generally flat and of a regular rectangular shape and is largely bounded by rows of small trees/hedging. There is an informal opening/entrance along the roadside boundary near the northwest corner of the site. Lands to the east and north of the site are undeveloped and in agricultural use. To the south and west of the site is two single storey dwellings.
- 1.3. Access to the site is via a short private cul-de-sac road which runs north of the L62521 county road to the south. This cul-de-sac serves four existing dwellings before a gate (at the northwest corner of the appeal site) apparently restricts access to agricultural use. The laneway is narrow and poorly surfaced.

2.0 Proposed Development

- 2.1. Permission is sought for a change of house type from that previously granted under planning reference no: 21/50310. The proposed dwelling is single storey and would be arranged in a H-shaped floor plan. It has a stated floor area of 227.87m² and a maximum ridge height of 5.3m. The layout, access, and servicing arrangements (including wastewater) are still in accordance with the previously permitted development and no alterations are proposed to same. However, the applicant in this case is different to the previously permitted development.

3.0 Planning Authority Decision

3.1. Decision

By order dated 22nd of June 2023, Donegal County Council (DCC) issued notification of the decision to grant permission, subject to conditions. Condition 1(a) of the decision outlines that all conditions of the parent permission shall be complied with unless otherwise stated.

Other conditions then largely replicate the conditions of the parent permission. This includes condition no. 2, which generally restricts the occupation of the dwelling to the applicant or (with written consent of the planning authority) persons who belong to the same category of housing need as the applicant (being those three categories and exceptional circumstances of need described in Policy RH-P-3 of the Development Plan).

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The assessment outlined in the initial DCC Planner's report can be summarised as follows:

- Regarding compliance with Policy RH-P-3, the submitted information is noted but some inaccuracies and omissions are highlighted. In light of the lack of information, it is reasonable to request additional information verifying the applicants' current living circumstances and links to this rural area.
- The revised proposal follows a similar design to that previously permitted in terms of footprint, scale, and elevational treatment. As such, no major concerns arise.
- No significant issues arise in relation to residential amenity.
- The planning authority has no concerns in relation to access proposals.
- Regarding wastewater treatment and surface water drainage, similar conditions to the previous permission shall apply.
- The application is for a change of house type and no new issues arise in relation to the AA Screening and Determination carried out in the previous application.
- No changes to Development Contributions applies to the previous permission.
- The need for Environmental Impact Assessment can be excluded on preliminary examination.
- The report recommended that Further Information should be sought in relation to rural housing need and compliance with Policy RH-P-3 of the Development Plan.

A Further Information request was subsequently issued. Following the applicant's response, the final DCC planner's report concludes that the submitted information confirms the applicant's rural housing need in accordance with RH-P-3 to the satisfaction of the planning authority. It recommends that permission should be granted subject to conditions, and this generally forms the basis of the DCC decision.

3.2.2. Other Technical Reports

None.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

One third-party submission was received from the appellants in this case. The issues raised are covered in the grounds of appeal.

4.0 **Planning History**

P.A. Reg. Ref. 21/50310: Permission granted to Michael & Catriona Quigley for the erection of a dwelling house with septic tank and domestic garage including all associated site development works. The conditions of this permission are generally consistent with those of the current DCC decision. However, Condition no. 20 states as follows:

All mitigation measures contained in the Natura Impact Statement received by the Planning Authority on 24 Feb 2021 shall be implemented in full by the developer in conjunction with the timelines set out, except as may be otherwise required in order to comply with the conditions attached.

Reason: To define the terms of the permission, to preserve the amenities of the area and to preserve the integrity of the adjoining SAC.

P.A. Reg. Ref. 20/51459: Permission refused to Michael & Catriona Quigley for the erection of a dwelling house with septic tank and domestic garage including all associated site development works. In summary, the refusal reasons related to:

- 1) The excessive scale, height, and detailed design would be out of character with the area and would be contrary to the Development Plan policies and objectives relating to siting and design.
- 2) To permit the height and design would set an undesirable precedent which would be harmful to the visual amenities of the area.
- 3) The planning Authority is not satisfied that the proposed development would not have a significant effect on the integrity of a Natura 2000 site (Leannan River SAC).

5.0 Policy Context

5.1. National Policy

National Planning Framework (NPF)

The NPF is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. In planning for the development of the countryside, it acknowledges that there is a continuing need for housing provision for people to live and work in the countryside, but also highlights the need to differentiate between types of rural areas and housing needs.

National Policy Objective 19 aims to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory

guidelines and plans, having regard to the viability of smaller towns and rural settlements.

Sustainable Rural Housing Development Guidelines (2005)

In supporting sustainable housing development patterns in rural areas, the guidelines outline that planning authorities should identify the needs of rural communities in the development plan process and manage pressure for overspill development in the rural areas closest to the main cities and towns.

Development plans should identify the location and extent of rural area types set out in section 5.3.2 of the NSS (superseded by the NPF), including rural areas under strong urban influence; stronger rural areas; structurally weaker rural areas; and areas with clustered settlement patterns. Having identified the rural area types, planning authorities should then tailor policies that respond to the different housing requirements of urban / rural communities and the characteristics of rural areas.

Chapter 4 of the Guidelines deals with development management and provides guidance aimed at ensuring that all the necessary information and documentation is assembled to facilitate an efficient and thorough consideration of applications.

5.2. County Donegal Development Plan 2018-2024

Rural Housing Policy

Section 6.3.1 of the Plan outlines that an assessment has identified rural area types which are classified in accordance with the Sustainable Rural Housing Guidelines. Map 6.2.1. outlines that the subject site is located within a 'Stronger Rural Area', which are defined as areas where population levels are generally stable within a well-developed town and village structure and in the wider rural area around them. This stability is supported by a traditionally strong agricultural economic base and the level of individual housing development activity in these areas tends to be relatively low and confined to certain areas. Section 6.3.3 states that, in general, one-off rural generated housing will be facilitated within areas defined as Stronger Rural Areas subject to compliance with all relevant policies and provisions of the County Development Plan.

Relevant objectives and policies can be summarised as follows:

RH-O-2: Support a balanced approach to rural areas which retain vibrancy.

RH-O-3: Ensure new development provides for rural generated need.

RH-O-5: Promote rural housing that does not detract from the landscape.

RH-P-1: All proposals for rural housing shall be subject to the consideration of requirements relating to location, siting and design and the impact on landscape and views; the protection of Natura 2000 sites and other habitats; water quality; traffic conditions; disposal of surface water and wastewater; flood risk management; and the occupancy of the dwelling.

RH-P-2: Consider proposals that meet a demonstrated need (see RH-P-3) provided the development integrates successfully into the landscape and does not further erode rural character. The Council will be guided by the considerations that a new dwelling shall:

1. Avoid creation / expansion of a suburban pattern of development.
2. Not create or add to ribbon development.
3. Not be detrimental to the amenity of the area or other rural dwellers or constitute haphazard development.
4. Not be prominent on the landscape and shall have regard to Policy T-P-15.
5. Shall not fail to blend with natural features and or involve excessive excavation or infilling.

RH-P-3: Consider proposals from prospective applicants in need of housing within an area defined as Stronger Rural Area, provided they demonstrate that they can comply with all other relevant policies of this Plan, including RH-P-1 and RH-P-2, where the applicant can demonstrate that they comply with one or more of the following:

- Persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base, for example, those working in agriculture, forestry, horticulture etc.;
- Persons with a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the

existence in the rural area of long established ties (7 years minimum) with immediate family members, or by reason of providing care to a person who is an existing resident (7 years minimum);

- 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 bonafides requirements of that permission. New holiday home development will not be permitted in these areas.

RH-P-9: Requires that all new rural dwellings are designed in accordance with the principles set out in Appendix 4 of the Plan 'Building a House in Rural Donegal – A Location, Siting and Design Guide'.

Landscape

In terms of landscape character, the county has been categorised into three layers of landscape value (Especially High Scenic Amenity', 'High Scenic Amenity' and 'Moderate Scenic Amenity'), which are illustrated on Map 7.1.1 of the Plan. The subject site is within an area classified as 'High Scenic Amenity', which are described as landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.

Within areas of 'High Scenic Amenity', Policy NH-P-7 seeks 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.

The Scenic Amenity Designations include several views to be preserved in the area. However, none of the identified view directions pass directly through/over the application site.

Other provisions

In relation to wastewater disposal, Policy WES-P-11 outlines that single dwellings in un-sewered areas shall comply with the Code of Practice for Waste Water Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) published by the Environmental Protection Agency.

Part B: Appendix 3 of the CDP outlines Development Guidelines and Technical Standards, including those relating to access, traffic, and drainage.

5.3. Natural Heritage Designations

The nearest Natura 2000 site is the Leanann River SAC, which is located c. 250m north of the application site. This SAC also overlaps with Derryveagh and Glendowan Mountains SPA at Gartan Lough (c. 1.5km northwest of the site).

5.4. EIA Screening

As per Form 2 attached to the file, a preliminary examination has been completed. Having regard to its limited scale and the nature of the proposed development involving a change of design for just one dwelling, there is no real likelihood of significant effects on the environment arising from the 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

An appeal against the decision of DCC to grant permission was submitted by P & E Callaghan of Keelogs, Churchill, Letterkenny. The grounds of the appeal can be summarised as follows:

- The applicants are not indigenous to the area as required under the County Plan.
- There is discharge from the two adjoining septic tanks which runs to the rear of the appellants' properties and is a tributary of the Leanann River SAC. Another house would only compound this issue.

- There are 11 houses within 300m of the proposed house. This amount of development is not good for a rural area.

6.2. Applicant Response

None.

6.3. Planning Authority Response

The planning authority response relies on the approved DCC planner's reports. It has no further comment to make on the appeal.

6.4. Observations

None.

7.0 Assessment

7.1. Introduction

- 7.1.1. This case involves a change of house design for an already permitted development where the parent permission has established that the principle of constructing a dwelling is acceptable. The alterations to the permitted development do not involve any changes to the permitted layout, access, or servicing arrangements, including those relating to the treatment and disposal of wastewater. Any permission in this case would be linked to the conditions of the parent permission, which address all relevant matters including access and servicing. Accordingly, while I acknowledge that the appeal has raised concerns about the density of development and wastewater emissions, I do not consider that the principle of the development or wastewater emissions should be considered in this case.
- 7.1.2. In addition to the proposed changes to the house design, it must also be noted that the applicants are different to those of the parent permission. Therefore, it will be necessary to consider compliance with the terms of condition no. 2 of the parent permission.

7.1.3. Therefore, having regard to the documentation submitted in connection with the application and the appeal, and having inspected the site, I consider that the issues for assessment are as follows:

- The proposed design
- Rural housing need.

7.2. The proposed design

7.2.1. The proposed design is generally consistent with the layout, shape, and form of the parent permission. It involves a slightly smaller floor area and has the same maximum ridge height of 5.3m. The proposed materials and finishes are generally similar. The proposed alterations generally involve a range of relatively minor alterations to the floor layout and elevational treatment. The ridge height of the central portion would also be raised to match the two main 'wing' blocks.

7.2.2. Although the proposal involves a wide range of alterations, I consider that the cumulative visual impact of the development would be generally consistent with that of the parent permission. Accordingly, I do not consider that the proposed alterations would result in any additional impacts that would seriously detract from the visual amenity or character of the area.

7.2.3. In relation to potential impacts on surrounding properties, I again consider that the proposed height, position, and window arrangements would be generally similar to that previously permitted. Accordingly, I do not consider that the proposed changes would detract from the residential amenity of adjoining properties by reason of overlooking, overshadowing, or overbearing impacts.

7.2.4. Having regard to the foregoing, I would have no objection to the proposed house design changes.

7.3. Rural Housing Need

7.3.1. The current case involves new applicants and I note that this possibility is specifically provided for under condition no. 2 of the parent permission. In full, Condition no. 2 states as follows:

2. (i) *The premises the subject of this permission shall (when constructed) be used for the purposes of a dwelling and subject to paragraph (iii) below the following*

restrictions shall apply during the period of seven years commencing on the first such use –

(a) The dwelling shall be used as the principal place of residence of the applicant or with the written consent of the Planning Authority by persons who belong to the same category of housing need as the Applicant (being those three categories and exceptional circumstances of need described in Policy RH-P-3 in the County Donegal Development Plan 2018-2024), and

(b) This permission will inure only for the benefit of the land and such persons entitled to use the dwelling as per paragraph (a) above, and

(c) The above restrictions will be embodied in an agreement under Section 47 of the Planning and Development Act, 2000 (as amended) to be entered into on the first application being made for written consent per paragraph (a) above and where a consent is granted the entry into the agreement will be a condition precedent of such consent.

(ii) Within two months of the first use/occupation of the dwelling, the Applicant will submit to the Planning Authority written confirmation of the person(s) using/occupying the dwelling in accordance with paragraph (a) and the date of commencement of such use/occupation.

(iii) The above restrictions shall cease to apply (earlier than the seven year period stipulated) on a sale of the dwelling by a mortgagee in possession but excluding the use of the dwellinghouse as a holiday home.

Reason: In order to define the terms of the permission and to comply with the Rural Housing Policy of the County Donegal Development Plan, 2018-2024.

7.3.2. For the purposes of this appeal, the key element of this condition is subsection (i)(a), which essentially outlines that, other than the original applicants, the dwelling shall be used as the principal place of residence of persons who belong to the three categories of housing need and exceptional circumstances of need described in Policy RH-P-3 of the Development Plan. The relevant elements of policy RH-P-3 will therefore be considered in the following paragraphs.

- 7.3.3. The starting point for RH-P-3 is to consider proposals from applicants who are 'in need of housing'. In this regard, the application outlines that the applicants are currently renting a property in Letterkenny (for 7+ years) and do not own a house. It states that they have not been granted permission for a dwelling on another site and that they intend to use the proposed dwelling as their only and permanent residence into the future. The applicants' stated circumstances (i.e. living in rented accommodation) is supported by documentary evidence and I am satisfied that this establishes a housing need.
- 7.3.4. Having established a housing need, it must now be considered whether the applicants comply with the three categories of housing need outlined under policy RH-P-3. The first category relates to employment and the third category relates to exceptional health circumstances. The applicants have not submitted any information on these matters and, therefore, it can be concluded that these categories do not apply.
- 7.3.5. The other category concerns a 'vital link to the rural area' and this is effectively broken down into three sub-categories as follows:
- having lived in this community for a substantial period of their lives (7 years minimum), or
 - by the existence in the rural area of long established ties (7 years minimum) with immediate family members,
 - or by reason of providing care to a person who is an existing resident (7 years minimum).
- 7.3.6. The applicants have not submitted any claim of having lived in this community for any period of time (i.e. the first sub-category) or that they are providing care to anyone who is a resident of the community (i.e. the third sub-category). Therefore, the applicants' case relies on the remaining category regarding the existence in the rural area of long established ties (7 years minimum) with immediate family members.
- 7.3.7. In the context of rural housing policy, I note that section 6.3.3 of the Development Plan defines 'immediate family members' as 'Sons, daughters, mothers, fathers, grandparents, grandchildren, brothers, sisters, aunts, uncles, nieces or nephews of

the applicant'. The application outlines that one of the applicants' mothers was born and reared in the area and that her grandfather has continued to reside there (c. 1.5km from the appeal site) for more than 65 years. It is stated that the applicant spent a lot of her childhood there and that she also has aunts, uncles, and cousins still living in the area. Based on this information, the planning authority is satisfied that the applicants adhere to policy RH-P-3.

- 7.3.8. Based on the application of the Development Plan definitions and provisions, I would also consider it reasonable to conclude that the applicants comply with policy RH-P-3. The policy outlines that a 'vital link to the rural area' can be satisfied by long established ties (7 years minimum) with immediate family members. The definition of immediate family members includes grandparents, and the application has outlined that a grandparent has continued to reside in the area for more than 65 years. Therefore, based on the Development Plan interpretation, there is a 'vital link to the rural area' which would comply with policy RH-P-3.
- 7.3.9. As previously outlined, condition no. 2 of the parent permission requires that any other prospective applicants must demonstrate compliance with Policy RH-P-3. Having regard to the foregoing, I am therefore satisfied that the applicants would comply with condition no. 2 of the parent permission.
- 7.3.10. As is commonly the case with rural housing cases, the Board may wish to take a wider account of rural housing policy. In that case, I would note that National Policy Objective 19 of the NPF highlights the need to distinguish between areas under urban influence and elsewhere. It outlines that areas under urban influence are those areas within the commuter catchment of cities and large towns and centres of employment. Given the location of the site just c. 9km from Letterkenny, I consider that it would be under urban influence, although I acknowledge that the Development Plan has designated it has a 'stronger rural area' (in accordance with the classifications outlined in the earlier Sustainable Rural Housing guidelines (2005)) rather than an 'area under strong urban influence' as described in the NPF.
- 7.3.11. In rural areas under urban influence, the NPF aims to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements. The NPF does not define a 'demonstrable

economic or social need', and in the absence of such definition, my opinion is that the existence of family ties as demonstrated in this application does not constitute 'economic or social need' that would satisfy the requirements of NPO 19 of the NPF.

- 7.3.12. However, I must again highlight the particular circumstances of this application, which involves changes to an existing permission rather than a *de novo* application for a new house. And while I acknowledge that the issue of rural housing need arises by virtue of condition no. 2 of the parent permission, I consider that this condition limits the scope of assessment to the Development Plan only, rather than a wider examination of national/regional policy. Therefore, notwithstanding my concerns about compliance with NPO 19 of the NPF, I consider that the application has demonstrated compliance with policy RH-P-3 of the Development Plan and that this satisfies the requirements of condition no. 2 of the parent permission. Accordingly, in the specific context of this application for a change of house design, I do not consider that refusal would be warranted on grounds of rural housing policy.

8.0 **Appropriate Assessment**

- 8.1. I acknowledge the proximity of the site to the Natura 2000 network. Under the parent permission, it was established that there was an indirect hydrological link to the Leannan River SAC and a Natura Impact Statement was submitted. The planning authority carried out an Appropriate Assessment and concluded that there would be no adverse effects on the integrity of European Sites. The decision to grant permission included a number of relevant conditions to protect Natura 2000 sites, which can be summarised as follows:

Condition 19: Site preparation and construction shall adhere to best practice and conform to the Inland Fisheries Ireland requirements.

Condition 20: All of the NIS mitigation measures shall be implemented.

Condition 21: All surface and storm water run-off shall be treated via a by-pass separator, prior to discharge to any stream/discharge channel that flows to an SAC/SPA.

- 8.2. The proposed development involves only changes to the permitted house design and I do not consider that these changes have any potential to impact on the Natura

2000 network. Furthermore, any permission will be governed by the parent permission and the associated conditions which have been deemed appropriate to protect the Natura 2000 network.

- 8.3. Therefore, having regard to the nature and limited scale of the works, involving only a change of house type from that previously granted and subjected to appropriate assessment, it is considered that the proposed development, individually, or in combination with other plans or projects, would not be likely to give rise to significant effects on any European Sites in view of the sites' conservation objectives, and Appropriate Assessment including the submission of Natura Impact Statement is not, therefore, required.

9.0 Recommendation

I recommend that permission should be granted, subject to conditions, for the reasons and considerations as set out below.

10.0 Reasons and Considerations

Having regard to the nature and extent of the proposed development involving only a change of house type from that previously granted under the parent permission (P.A. Reg. Ref. 21/50310), and given that the applicants comply with the terms of subsection (i)(a) of Condition no. 2 of the parent permission, it is considered that the proposed development would not seriously detract from the visual amenity or character of the area, would not seriously detract from the residential amenities of surrounding properties, would not lead to an excessive concentration of dwellings in this rural area, and would be consistent with the provisions of the County Donegal Development Plan 2018-2024. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The proposed house design and layout shall be in accordance with the plans and particulars lodged with the application on the 13th day of February 2023, 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.

Reason: In the interest of clarity.

2. Apart from the change of house type as specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the parent permission granted on the 9th day of April 2021 under planning register reference number 21/50310, and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the development is carried out in accordance with the parent permission.

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.

Stephen Ward
Senior Planning Inspector

11th September 2023