



An
Bord
Pleanála

Inspector's Report ABP 320577-24

Development	Retention of basement, change of use of garage to two bedrooms and conversion of roof space area to two bedrooms. Permission for the change of use of the dwelling to a 9 bedroom guesthouse.
Location	Tullygay, Newmills, Letterkenny. Co. Donegal.
Planning Authority	Donegal Co. Council.
Planning Authority Reg. Ref.	2460567.
Applicant(s)	C & C Property Investment Ltd.
Planning Authority Decision	To Refuse Permission.
Type of Appeal	First Party.
Appellant(s)	C & C Property Investment Ltd.
Observer(s)	Tullygay Residents. Colin Lennon.
Date of Site Inspection	February 8 th , 2025.
Inspector	Breda Gannon.

1.0 Site Location and Description

- 1.1. The site is located in the townland of Tullgay c.5km southwest of Letterkenny. Co Donegal. It has a stated area of 0.25 ha and comprises steeply sloping lands. The site accommodates a large detached two-storey house, incorporating a basement and converted attic. It has a finished ground floor level which is significantly higher than adjoining road level. A level platform has been created to the rear of the house and a low stone wall demarcates an area of open space. The remaining open areas to the front of the house are surfaced in stone and the site boundaries are formed by walls and wooden fencing. The site is adjoined on both sides by large, detached dwellings.
- 1.2. Access to the site is from a private road, off the R250 regional road to the southeast. The vehicular access is located at the northern end of the site frontage, which is constructed in stone. A concrete roadway with a very steep gradient provides access to the rear of the site.
- 1.3. The area consists of an undulating rural landscape and the main land use is agriculture with residential development in ribbon form along the road network.

2.0 Proposed Development

- 2.1. The proposal as described in the public notices submitted with the application seeks the following:

(A) Retention permission for (i) basement of dwelling (ii) change of use of garage to two bedrooms and (iii) conversion of roof space area to two bedrooms and,

(B) Permission for the change of use of dwelling to a 9-bedroom guesthouse.

The application is supported by a Planning Statement prepared by Harley Planning Consultants Ltd.

- 2.2. Unsolicited further information was submitted to the planning authority on June 24th, 2024 which stated that the applicant wished to revise the proposal and seek retention permission for the basement area for use for storage purposes only, change of use of garage to games room and conversion of roof space area to two bedrooms and permission for a six bedroom guesthouse.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for the development for 3 no. reasons relating to the following:

1. Traffic hazard and the ability of the existing road network to cater for the increased volume of traffic associated with the development.
2. Public health considerations on the basis that the existing effluent treatment system cannot cater for the safe and effective treatment and disposal of foul effluent associated with the development.
3. Unacceptable impacts on the amenities of adjacent properties within the rural cluster due to likely noise impacts.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report of 26/7/24 notes that the revised proposals submitted as unsolicited information provides for a total of 6 no. bedrooms (4 no. at first floor level and 2 no. at attic level). The revised plans are in accordance with Policy TOU-P-6 of the Plan in respect of the provision of a guesthouse in a rural area. However, the property is currently listed on Airbnb with reviews as recent as July 2024. The property is listed as a 7-bedroom (14 guests) accommodation with 4 no. bedrooms at first floor level, 2 no. bedrooms at second floor level and a lower ground floor apartment with a separate entrance.

The basement, for which retention is sought, is not openly visible from the private road and does not detract from the character of the dwelling. Originally, a kitchen and 2 no. bedrooms were proposed at this level. This raised concerns as there are no windows serving any of the rooms at this level. Its use for storage purposes only is considered acceptable.

Policy TOU-P- 8 specifically states that any proposal must demonstrate that *'the development will not impact on existing residential amenities.'* The planning authority is not satisfied that the development will integrate appropriately in context with the

existing residential cluster at this location. The third-party comments regarding noise and disturbance are acknowledged.

The existing access to the property was granted on the basis that it would be used as dwelling. It has a steep gradient with single vehicle carrying capacity.

Notwithstanding the reduction in the number of bedrooms proposed, it is considered that the proposed development would intensify the use of the driveway and the existing arrangements are not sufficient to accommodate the additional traffic that would be generated by the proposal. No information is provided on the type/frequency of expected deliveries associated with the development which adds to the concerns regarding the capacity of the existing driveway to cater for the proposed development.

While the information submitted suggests that the existing foul effluent system is acceptable to accommodate 6 no. bedrooms, the planning authority has concerns, as per the online listing that the dwelling is operating beyond the capacity of the septic tank.

3.2.2. Other Technical Reports

Fire Services Report of July 12th, 2024 noted that a Fire Safety Certificate was required and that access and facilities for the Fire Service was not adequate.

The E.E Building Control report of July 10th, 2024 raised no objection to the development subject to conditions.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

Observations were submitted by 4 no. parties which raised similar issues to those raised in the appeal.

4.0 Planning History

05/6016: Permission granted for the construction of a dwelling house and septic tank on the site.

09/40041: Permission granted for the retention and completion of dwelling house previously granted permission under Reg Ref No 05/6016.

10/40112: Extension of duration of planning permission Reg Ref No 09/40041.

10/40374: Permission granted for retention and completion of alterations to garage and conservatory of dwelling previously granted permission under Reg Ref No 09/40041.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the **County Donegal Development Plan 2024-2030**, which came into effect on June 26th, 2024, except those parts of the plan affected by the Draft Ministerial Direction. The site is not affected by the Direction.

Chapter 10 of the plan sets out the policies and objectives in relation to tourist accommodation.

Under the provisions of **Policy TOU-P-6** the development of tourism accommodation involving refurbishment/renovation of an existing building is considered acceptable in rural areas with the exception of area designated Especially High Scenic Amenity, subject to compliance with the criteria set out in Policy TOU-P-8, which is discussed below in the assessment section of the report.

5.2. Nature Designations

The site is not located within any European site. The closest sites in the vicinity are as follows:

- Lough Swilly SAC (002287) lies c 5.5km to the northeast.
- Lough Swilly SPA (004075) lies c 5.5km to the northeast.
- Leannan River SAC (002176) lies c 5km to the northwest.

6.0 EIA Screening

- 6.1. The development is not of a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of this report.

7.0 The Appeal

7.1. Grounds of Appeal

The following summarises the grounds of appeal:

Reason No 1

- Disagrees with the planning authority's assessment that the proposed guesthouse would constitute a traffic hazard.
- The property has been operating as tourist accommodation for over a year and to date no traffic accidents have occurred as a result of this use. It is considered that the nature of the driveway and the road features associated with the private access road serving the proposed guesthouse and seven other dwellings, significantly restricts traffic speeds and as a result no collisions have occurred to date.
- From the accommodation records (Appendix D) it is clear that traffic movements into and out of the property fall well short of the volumes that would normally be associated with the use of the property as a private dwelling, which would have daily traffic movements associated with travel to and from school, work etc which would exceed those recorded at the proposed development.
- The reservation details indicate that the use of the accommodation occurred mainly during the spring/summer period and at weekends. Of a potential of 139 days (April 1st - August 17th) the accommodation was only occupied for 77 days. It is reasonable to conclude that traffic movements associated with a

private dwelling would be far in excess of the traffic generated by a private house.

- The occupancy rates for the development demonstrates that the use of the accommodation occurred at weekends only, whereas traffic movements at any private dwelling would be continuous weekly.
- There is no evidence to support this reason for refusal.

Reason No 2

- The applicant engaged the services of Septech Wastewater Services to assess the capacity and functionality of the existing wastewater treatment unit. The report (Appendix E) concluded that the treatment unit and polishing filter was suitable for a maximum design PE of 8 persons, and therefore a maximum of 6 bedrooms in accordance with the EPA's Code of Practice.
- In light of this report, the applicant amended the proposal to incorporate 6 bedrooms and this amendment was accepted by the planning authority.
- On the basis of the information contained in the Septech report and the amended development proposal, the planning authority has no basis for the refusal of the proposal on public health grounds.

Reason No 3

- There is no evidence established by the planning authority that the use of the property for tourism accommodation would impact on adjoining properties due to noise and nuisance.
- The applicant employs an agent to oversee requests for use of the accommodation. No hen or stag parties are allowed. It is mainly used by families who do not cause undue noise or disturbance. The evidence for this refusal reason has been based entirely on third party comments.
- The dwelling is located a significant distance from adjoining properties and has the advantage of significant screening, protecting their privacy and buffeting them from any potential noise and nuisance. There are no windows

above ground level overlooking the adjoining property to the northeast, while the property to the southwest is screened by a dense band of trees.

- The Board is requested to overturn this reason for refusal.

Administrative issues

- On the basis of unsolicited information submitted by the applicant, the proposed development was amended.
- The refusal decision by the planning authority is clearly based solely on the change of use of the dwelling to a guesthouse. No regard to the retention issues was given consideration in the planning authority's decision.
- In respect of the amended proposal and in anticipation of a favourable decision, the Board may wish to seek new public notices under section 132(1) of the P & D Act 2000 (as amended) setting out the amended development now sought by the applicant.

7.2. Planning Authority Response

- The planning authority considers that all matters raised in the appeal have been addressed in the Planning Officer's report of 26/7/24.
- The planning authority wishes to rely on the content of same in response to this appeal.

7.3. Observations

Observations on the appeal were received from Tullygay Residents and Colin Leenon which are summarised as follows:

Validity of appeal

- The appeal was made in the name of C&C Property Investments Ltd while the application was made in the name of C&C Investments Ltd, which is not a registered company in Ireland or the UK. The appeal should, therefore, be considered invalid.

Traffic hazard

- The property has been operating as an Airbnb primarily at quieter weekends and has not been operating on a full-time basis. The applicant is now proposing that the guesthouse be available 365 days of the year.
- Disagrees that the volumes of traffic associated with the tourist accommodation would be substantially less than that associated with a private dwelling.
- The development is located in a rural area on a minor road that is not in charge by Donegal Co Council. The road is not finished to a required standard and the existing footpath is in poor condition. The existing 90-degree bend on the service together with excessive gradient is dangerous and any additional traffic will add to this issue.
- The applicant has purposely failed to outline traffic movements on the road per day. The road exits onto a busy regional road with a substandard junction. The intensification of traffic will increase traffic hazard at the junction which has no right turning lane has been the scene of two fatalities in recent years.
- The driveway to the property is steep with single vehicle carrying capacity. It is not considered that the existing arrangements are sufficient to accommodate the additional traffic movements associated with the proposed development.
- No information is provided on the type, frequency or nature of deliveries associated with the development. There is inadequate parking provided and it has not been demonstrated how vehicles will manoeuvre safely within the site.
- Having regard to the increased parking space proposed including 6 no. car parking spaces, staff parking space and delivery vehicle parking space, the traffic requirements exceed those associated with a private dwelling.
- The appeal suggest that the access road is used by 7 no. dwellings when it is used by 15.

- Agrees with Donegal Co. Council that the existing road network cannot safely handle any extra traffic and would be contrary to the traffic safety provisions of Policy TOU-P-8 of the development plan.

Effluent treatment and disposal

- The applicant has failed to demonstrate that the wastewater treatment system and disposal arrangements can cater for the safe and effective treatment and disposal of effluent in accordance with the necessary standards.
- The conclusion reached in the Septech report is that the wastewater treatment unit was designed for a PE of 8 and a maximum of 6 bedrooms.
- The appeal states that the Airbnb and Booking.com listing has now changed restricting the accommodation offer to six bedrooms. The attached data from Airbnb states that the accommodation has capacity for 14 guests.
- Agrees with Donegal Co. Council that the property is operating above the capacity of the wastewater treatment unit and proposes to continue in the future. Therefore, the proposal would be prejudicial to public health. Changing the use of the garage to a games room and the basement area for storage should be questioned as to other potential future motives for unauthorised temporary bedroom space.

Impacts on the amenities of adjacent properties.

- Stating that there will be no 'hen or stag parties' allowed does not deter or mean that these groups cannot book the accommodation. If the applicant is successful in the appeal, there is nothing preventing the applicant from accepting such groups. Creating a games room would indicate that large groups are the target.
- The photographs with the appeal clearly shows that there is no screening protection from the proposed development to the property to the northeast. The building is only 3.6m from the boundary.
- The front balcony area where people congregate during their stay is virtually on the boundary and overlooks the adjacent property. The balcony resulted from a breach in the original planning permission with overlooking of the adjoining residential property and garden. The drawings submitted with the

application do not reflect the existing development in that the glass balcony has not been shown to the front and side elevation.

- The potential degree of overlooking especially from rooms that are likely to be well used would have unacceptable impacts on privacy. There are also impacts associated with the high tech 360-degree CCTV cameras already installed on the property.
- The proposed 6 no. car parking spaces are located along the shared boundary.
- The residents of the dwelling to the northeast state that there has been noise and disturbance on several occasions from the Airbnb. It would not be possible to vet all guests and as such it would not be possible to ensure that noise levels will be minimal.
- Agrees with the planning authority that the proposal is contrary to the proper planning and sustainable development of the area and if permitted would have an unacceptable impact on the amenity of the adjacent properties within this quiet rural cluster of dwellings due to noise and nuisance.

Water issues

- There is an ongoing issue with a lack of acceptable water pressure in this area. There are concerns that the proposed development will add to this.

8.0 Assessment

8.1. Introduction

Having examined all the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local policies and guidance, I consider the substantive issues to be considered in this appeal are as follows:

- Principle of the development.
- Impacts on the visual and residential amenity of the area.
- Traffic safety.

- Other matters
- Appropriate Assessment.

8.2. Principle of the development

- 8.2.1. Under the current development plan the provision of a guest house with accommodation of up to ten bedrooms including the refurbishment/renovation of an existing building is considered acceptable in rural areas, (except within those areas designated Especially High Scenic Amenity), subject to the criteria set out in Policy TOU-P-8 of the Plan.
- 8.2.2. These criteria cover a range of considerations including the protection of the wider environment such as designated sites, sensitive natural environments, coastlines, shorelines and river banks, water bodies and scenic and built heritage. It also includes more site-specific requirements including siting and design, site screening, boundary treatment, water and wastewater infrastructure, and considerations in relation to protection of residential amenities and traffic/parking considerations.
- 8.2.3. The proposal relates to the change of use of an existing residential property. It is located outside the area designated Especially High Scenic Amenity and is well removed from sensitive environments and designated sites. Site specific matters have already been considered by the planning authority in its decision to grant permission for the original house. Having considered all of the criteria set out under Policy TOU-P-8, I would accept that the principle of the development is acceptable in this location, subject to matters relating to potential impacts on the visual and residential amenities of the area and traffic considerations, which are considered in more detail below.

8.3. Impacts on the visual and residential amenities of the area.

- 8.3.1. The basement proposed for retention is concealed with no visual expression outside the site boundaries. It does not have any windows and the revised proposal indicates that its use will be for storage purposes only. Subject to this restriction on its use, I do not consider that any significant issues arise regarding its retention.
- 8.3.2. The remaining elements proposed for retention include the conversion of the garage to a games room and the conversion of the attic space to two bedrooms. The 'garage' is attached to the rear and is incorporated within the house. The windows in

the roof space are located to the rear of the house. The retention of these elements would not result in any material alterations to the house, which would result in any additional impacts on the visual amenities of the area.

- 8.3.3. The appeal site is located between two established residential properties on either side. The potential for overlooking of the private rear amenity space of these dwellings is restricted by existing boundary walls/fencing and vegetative screening. There will be no material alterations to the house arising from the elements proposed for retention that would create additional impacts on privacy.
- 8.3.4. Issues have been raised in the appeal regarding overlooking from a balcony erected to the front of the house, which is not shown on the submitted drawings and is stated to have resulted from a breach in the original planning permission. The 'balcony' is a level surfaced area created at ground floor level which has been provided with a clear glass screen erected over a retaining wall. It is positioned tight up against the property to the northwest and facilitates a degree of overlooking of the semi-private front/side garden space of this property.
- 8.3.5. I would point out to the Board that while the balcony may have been erected without the benefit of planning permission, its retention does not form part of the current application. It does not, therefore, come within the scope of this appeal. Any matters regarding its unauthorised status are matters for the planning authority.
- 8.3.6. I accept that the balcony area creates an amenity space to the front of the house, which could be an attractive area for guests to congregate and socialise. However, I consider that this would be most likely in the case where the entire property is booked by a large group (Airbnb), who are known to each other and spend the majority of their time at the property. I consider this is less likely in the case of patrons of a guest house, where individual rooms are booked by guests generally unknown to each other and who spend most of their time away from the property. Subject to the use of the house as a guesthouse, I do not consider that any significant impacts on the residential amenities of adjacent properties would arise.

8.4. Traffic safety

- 8.4.1. I consider that the most substantive issue in this appeal relates to traffic considerations. I do not share the views of the appellant that the operation of the guesthouse would not result in increased traffic movements than that generated by a

private house. There would also be service traffic associated staff and deliveries, not associated with a private residence, which has not been considered.

- 8.4.2. The gradient of the driveway is excessive and poses safety risks for vehicles entering and leaving the site. Vehicles entering the site from the public road do not have clear visibility of cars leaving the site and travelling in the opposite direction. While there is a small pull-in area, the driveway is designed for single vehicle traffic and has insufficient width for two cars to pass.
- 8.4.3. The substandard driveway joins the local road which serves a considerable number of dwellings. It is also substandard in width, with an acute bend a short distance from the site which limits visibility of vehicles approaching from the south.
- 8.4.4. Having regard to the very steep gradient of the driveway to the site and the restricted width and poor alignment of the adjoining local road I do not consider that there is any capacity to accommodate the additional traffic that would be generated by the change of use of the house to a guest house without creating additional impacts on traffic safety.
- 8.4.5. I would concur with the planning authority that the proposal is contrary to Policy TOU-P-8 of the development plan in terms of traffic safety considerations, and I would, therefore, recommend that permission be refused for the change of use of the existing house on these grounds.

8.5. Other matters

- 8.5.1. The planning authority in their second reason for refusal raise issues regarding the adequacy of the effluent treatment arrangements on the basis that the house is listed online as 7-bedroom short term accommodation. The applicant's assessment of the existing wastewater treatment and disposal arrangements confirmed that the installed system is suitable for a maximum of 6 no. bedrooms
- 8.5.2. The application must be considered on its merits, and it would be inappropriate to make assumptions on potential unauthorised development in the future. I would, therefore, conclude that on the basis of the application made, which is for a 6 bedroom guesthouse and from the site assessment carried out on the existing effluent treatment system which confirms its suitability for the development of the

scale proposed, that permission should not be refused for the proposal on the grounds of the inadequacy of the system and potential impacts on public health.

- 8.5.3. It is contended in the appeal that the appeal should be considered invalid as the name on the planning application (C&C Investment Ltd) is not a registered company either in Ireland or the UK, and the appeal documentation is in a different name (C&C Property Investment Ltd). I note that there was no response from the First Party on this matter.
- 8.5.4. However, I do note that the document which gives consent to MG Architects to submit the planning application refers to the applicant as C&C Property Investment Ltd. I also note that the application documentation includes a Certificate of Incorporation stating that C&C Property Investment Ltd is a registered company in the UK. While the appellant suggests an ulterior motive for the error, there is no evidence to suggest that it was an attempt by the applicant to conceal its identity, or that the error is anything other than a minor mistake by applicant's agent.
- 8.5.5. The amended proposals, including plans and elevations were submitted as unsolicited further information during the processing of the information and were considered by the planning authority in its determination of the application. All of the information on the file is available for consideration by the Board and accordingly I do not, therefore, consider that there is a requirement for the submission of any additional documents under section 132 (1) of the Planning and Development Act 2000 (as amended).

9.0 AA Screening

Screening the need for Appropriate Assessment: Screening Determination (Stage 1, Article 6(3) of Habitats Directive)

I have considered the proposal to retain basement for storage purpose, change of use of garage to a games room and the attic space to residential accommodation and for permission to change the use of the house to a guesthouse in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located in a rural area and c5.5km southwest of Lough Swilly SAC and Lough Swilly SPA.

The proposed development comprises retention of elements of the dwelling and its conversion to a guest house.

No nature conservation concerns were raised in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

The reason for this conclusion is as follows

- The small scale and nature of the development involving retention and change of use of an existing dwelling
- The existing effluent treatment system which is considered adequate for the development
- The separation distance of 5.5km to the nearest European site

I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

10.0 Recommendation

10.1. On the basis of the above assessment, I recommend that the Board issue a split decision as follows:

- grant permission for the retention of the basement, the change of use of the garage to a games room and the conversion of the attic space to two bedrooms, and

- ii. refuse permission for the change of use of the existing house to a six bedroom guesthouse.

11.0 Reasons and Considerations

Reasons and Considerations (1)

Having regard to the established use of the site for residential purposes, it is considered that the retention of the basement for storage purposes, the change of use of the garage to a games room and the conversion of the roof space area to two bedrooms, subject to compliance with the conditions set out below, would not detract from the visual or residential amenities of the area, and would, therefore be in accordance with the proper planning and sustainable development of the area.

Conditions

1.	The use of the basement shall be restricted to use for storage purposes only in association with the use of the house as a single family dwelling. Reason: In the interests of clarity and residential amenity
2.	The use of the games room shall be restricted to purposes incidental to the enjoyment of the house as a single-family dwelling. Reason: In the interests of clarity and residential amenity

Reasons and Considerations (2)

Having regard to the excessive gradient of the private driveway serving the site, its poor alignment and single vehicle carrying capacity, coupled with the restricted width and poor alignment of the adjoining access road, including a severe bend to the south of the site, it is considered that the conversion of the house to a guesthouse, would significantly intensify the use of the site and create significant additional vehicular movements to and from the site, which would seriously impact on traffic safety both within the site and on the adjacent road. It is considered that the development would be contrary to Policy TOU-P-8 of the current development plan for the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

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.

Breda Gannon
Planning Inspector

21st February 2025

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP 320577-24		
Proposed Development Summary	Retention of basement for storage purposes, change of use of garage to games room and conversion of roof space area to two bedrooms and permission for the change of use of the dwelling to a 6-bedroom guesthouse.		
Development Address	Tullygay, Newmills, Letterkenny. Co. Donegal		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes		
	No	✓	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes			Proceed to Q3.
No	✓		No
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes		State the relevant threshold here for the Class of development.	EIA Mandatory EIAR required
No	N/A		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	N/A	State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold.	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	✓	Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ Date: _____