



An  
Bord  
Pleanála

## Inspector's Report

### ABP-321699-25

<b>Development</b>	Retention of alterations to the fenestration of extended house (all constructed on foot of planning ref. no. 20/51402) and all associated site works.
<b>Location</b>	Fanaghans, Inver, Co. Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2461856
<b>Applicant(s)</b>	Jonathan and Claire McMorrow.
<b>Type of Application</b>	Retention.
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Paul and Alicia Hayden.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	27/03/2025
<b>Inspector</b>	Alan Di Lucia

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## **1.0 Site Location and Description**

- 1.1. The site is located in the townland of Fanaghans along the Donegal Coastline 1.9 km to the south-west of Inver, a scattered settlement on the N56 between Donegal Town (13km to east) and Killybegs (15km to west). This site is accessed off the local road network, which runs between the national primary road and the coastline. It is one of six sites which are elevated in relation to the coastline and the adjacent local road. Each site accommodates a single storey dwelling with sea views.
- 1.2. The dwelling on the site was originally a traditional style cottage. It has been extended on its north-eastern side and to the south-east to its rear. The latter extension is accompanied by a deck/platform, which runs along the south-eastern elevation of the rear extension and wraps around the south-western side elevation and the south-western side elevation of the original cottage. The seaward edge of the deck/platform is enclosed by means of a glass balustrade.

## **2.0 Proposed Development**

- 2.1. Planning Permission is sought for retention of alterations to the fenestration to the rear elevation of the extended house, including installation of sliding doors and the erection of a suspended deck / platform with glassed balustrade to the east side of the existing house on foot of planning permission (Ref 20/51402). The floor area of the existing house is 135.7m<sup>2</sup> with the area for which the retention relates is 28.35m<sup>2</sup>.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority issued a notification of decision to grant planning subject to 4 conditions.

Conditions of Note include:

- Cond 2. No other development, whether or not “Exempted Development”, shall be carried out within the site without prior written agreement of the Planning Authority.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner's Report had regard to the following planning issues:

- The Principle of Development and outlined the policies pertinent for assessment and noted that whilst the site is within an area designated as Especially High Scenic Amenity, this does not preclude development, particularly when it involves an existing building.
- Considered the separation distances to adjoining properties and the design and concluded no loss of privacy, overlooking or residential amenity.
- Access to the site is existing, as is the wastewater treatment, water supply and surface water systems.
- The Planner's Report did not consider that either Appropriate Assessment or Environmental Impact assessment was required.
- Noted that no development contributions apply.

#### 3.2.2. Other Technical Reports

None

### 3.3. Prescribed Bodies

No Submission Received

### 3.4. Third Party Observations

One submission received relating to:

- Impact of the extension relating to the character of the dwelling
- Variance with policy as site located within Especially high Scenic Area Landscape.
- Contrary to Policy RH-P-9 of the County Donegal Development Plan 2024-2030,

- Loss of residential amenity and privacy.

## 4.0 Planning History

### On Appeal Site

#### 4.1.1. PA Reference 20/51402

Permission granted for the construction of a single storey extension to the east of the existing dwelling house; decommission existing wastewater treatment system and installation of new wastewater treatment system and all ancillary site works.

#### 4.1.2. PA Reference 20/50566

Permission sought for alterations to single storey extension. Planning application withdrawn.

#### 4.1.3. PA Reference S5 21/22

Section 5 Declaration submitted to PA by applicant seeking a declaration that garage and covered canopy area to side and deck area / perimeter path with glass railing along southeast elevation are exempted development. The Planning Authority declared that the proposal is development and is exempted development.

#### 4.1.4. PA Reference S5 21/38 and ABP Reference ABP-312310-21

Section 5 declaration submitted to PA by the Referrer (Paul Hayden) seeking a declaration that material alterations to fenestration and provision of suspended deck/platform to an existing house are exempted development. The Planning Authority Declared that the proposal is development and is exempted development.

The referrer requested under Section 5(3)(a) of the Planning and Development Act 2000, as amended, review the PA declaration of the subject case. The Board declared that the proposal is development and is not exempted development. The declaration is based on the following:

*‘Only one continuous project has transpired and so, as this project is development that is not exempted development, all of its component parts, including the alterations to its fenestration and the provision of a deck/platform, are development that is not exempted development.’*

#### 4.1.5. PA Reference: 97/1314

Planning Permission granted for a single-story dwelling house and septic tank system

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. County Donegal Development Plan 2024-2030 (CDDP) is the relevant statutory development plan for the area.
- 5.1.2. The subject site is located within an area designated as a 'Structurally Weak Rural Area'. The subject site is also located within an area designated as 'Especially High Scenic Amenity'. These are sublime natural landscapes of the highest quality that are synonymous with the identity of County Donegal. These areas have extremely limited capacity to assimilate additional development.
- 5.1.3. RH-O-4 states that it is an objective to '*ensure that rural housing is located, designed and constructed in a manner that does not detract from the character or quality of the receiving landscape having particular regard to Map 11.1: 'Scenic Amenity' of this Plan.*'
- 5.1.4. Policy L-P-1 states that it is the policy to 'protect areas identified as 'Especially High Scenic Amenity' on Map 11.1 'Scenic Amenity'. Within these areas, only developments of strategic importance, or developments that are provided for by policy elsewhere in this Plan may be considered. '
- 5.1.5. Policy L-P-2 states that it is the policy to '*protect areas identified as 'High Scenic Amenity' and 'Moderate Scenic Amenity' on Map 11.1 'Scenic Amenity'. Within these areas, only development of a nature, location and scale that integrates with, and reflects the character and amenity of the landscape may be considered, subject to compliance with other relevant policies of the Plan.*'
- 5.1.6. RH-P-6 considers that '*proposals for the refurbishment, or replacement, or extension of an existing non-vernacular habitable dwelling for use as either a permanent dwelling or as a holiday home, subject to compliance with the terms of Policy RH-P-9 below. The design, size, height and finishes of the finished dwelling must be of a scale and form such that the development integrates effectively into the host landscape.* '

5.1.7. RH-P-7 considers that ‘proposals for the refurbishment of derelict traditional buildings (refer to definitions below) within rural areas, for use as either a permanent dwelling or as a holiday home, subject to (inter alia) the following criteria being satisfied:

- The proposed development will provide for the retention of the majority of the existing building.
- Proposals for extensions shall respect the character and appearance of the traditional building. The design, size, height and finishes of the proposed refurbishment/ extension must respect the architectural character of the original building type unless otherwise agreed with the Planning Authority, and the finished building must otherwise be of a scale and form such that the development integrates effectively into the host landscape.
- Compliance with the terms of Policy RH-P-9 below.’

5.1.8. RH-P-9 considers that *‘Proposals for individual dwellings (including refurbishment, replacement and/or extension projects) shall be sited and designed in a manner that is sensitive to the integrity and character of rural areas as identified in Map 11.1: ‘Scenic Amenity’ of this Plan, and that enables the development to be assimilated into the receiving landscape. Proposals shall be subject to the application of best practice in relation to the siting, location and design of rural housing as set out in Donegal County Council’s ‘Rural Housing Location, Siting and Design Guide’*

## 5.2. Natural Heritage Designations

The following European Sites are located within the vicinity of the appeal site

Site Code	Site Name	Distance (Approx.)
000133	Donegal Bay (Murvagh) SAC	6km
000191	St. John’s Point SAC	7.1km

## 5.3. EIA Screening

The subject development does not fall within a class for which EIAR is required. (See Form 1 appended to this report)

## 6.0 The Appeal

### 6.1. Grounds of Appeal

#### 6.1.1. Broad Environmental Impact

The proposed development breaches the CDDP:

- RH-0-4 in terms of the location, design and construction in a manner that does not detract from the receiving environment. Notes that landscape classification as '*Especially High Scenic Amenity*'. Highlights L-P-1 which states that only developments of strategic importance or provided for by policy may be considered. States that the current proposal is at variance with the above provision and that the unauthorised works constitute development of a strategic importance or developments that are provided for by policy elsewhere in the DCCP. Therefore, the granting of permission in this case constitutes a material contravention of the development plan.
- Outlines the provisions of RH-P-6 and concludes that the variations in the application further exacerbate previous breaches by effectively creating more external living space and quotes the declaration issued by An Bord Pleanála (ABP-312310-21) that the alterations are integral to the project to construct this extension.
- References that RH-P-7 may be relevant depending on the interpretation of vernacular
- Outlines that the proposal is contrary to the provisions of RH-P-9 and that the subject decision would further legitimise earlier breaches in this regard in particular areas classified as having '*Especially High Scenic Amenity*'

#### 6.1.2. Loss of Residential Amenity & Privacy

- Noted the 2021 planning application which was withdrawn following the appellants submission which was motivated entirely to protect their privacy. Notes that pre-planning on the original design was accepted in principle subject to the protection of 'existing third-party amenities.
- Outlines that the suspended deck platform directly overlooks the rear garden and patio area of the appellant's house and is excessive in the context of the applicants'

rights to enjoyment of their own property. Points out that the original scheme ensured maximising sea views and providing a generous outdoor space, without the need for the development to be retained which comes as a high cost to third party amenity and environmental impact.

- The fenestration changes and deck completely alter the design intent and character of the house and the potential to adversely impact on the appellants property by providing a great opportunity to overlook and reduce the residential amenity of the adjoining property.
- The appellants note condition 4 of the permission which relates to planting along their adjoining property boundary, whilst well intended, it will block light from the south and provide no amelioration in terms of loss of amenity. Such a condition conveys an acknowledgement by the PA of the legitimacy of their concerns in relation to loss of residential amenity.
- In conclusion the appellant acknowledges the right of the applicants to tailor their home to their needs, however it is their view that the unauthorised development in question represents an unacceptable design to maximise their amenity with no regard to adjoining property. Permission exists which would be less injurious to the appellant's property, landscape and environment. The appellant contends that the PA erred in their decision to permit the retention of this unauthorised development, and that permission should be refused.

## **6.2. Applicant Response**

- Notes that the works were constructed on foot of planning Permission Ref. 20/51402 and a Section 5 declaration from Donegal County Council. The small corner window in question to the rear of the extension is 10.4 metres to the boundary, with the deck located 12.75 metres from the boundary. Highlights exempted development provisions relation to house extensions that any windows proposed at ground level shall not be less than 1 metre from the boundary it faces.
- The constructed deck area is located at a level of 670mm below the house of the appellant and the extension is located forward of the house of the appellant, all of which makes it difficult to impact negatively on the property to

the east. The applicants have no intention of overlooking the property to the east, and their property is intentionally designed and orientated with views to sea and private spaces on seaward side.

- Notes the appellants recent construction of a garage (without planning permission) with large patio area. The applicants constructed the extension in good faith on foot of planning and a Section 5 declaration.

### **6.3. Planning Authority Response**

- The PA advises that the contents of the appeal including the site history are noted. The PA is of the position that the retention of the changes can be accommodated within the overall site area and do not breach planning policy. The development is to the rear of the existing house and does not impact negatively on the public view. The entire site is at a lower level than the appellants property and therefore overlooking is not considered significant. The PA has cognisance of the 'Especially High Scenic Amenity' classification, but this does not inform a blanket ban on all development. The overall scheme is of high architectural design. The PA considers that all pertinent matters have been considered in the planning reports.

## **7.0 Assessment**

7.1. Having examined the application details and all documentation on file, including the submission received in relation to the appeal and response of the applicant, and inspected the site and having regard to local policy, I consider that main issues in this appeal are as follows.

- Principle of the Development
- Residential Amenity

7.2. Principle of Development

7.2.1. The subject site is located within a Structurally Weak Rural Area and an area classified as 'Especially High Scenic Amenity' as outlined in the CDDP. These areas are described as areas of sublime natural landscapes of the highest quality with extremely limited capacity to assimilate additional development. Policy L-P-1 applies

and states the within these areas only developments of strategic importance or development that are provided for by policy elsewhere in the CDDP may be considered. The works to which this retention application relates are for alterations to the fenestration to the rear of the extension to the existing house granted permission under planning reference: 20/51402 and for the construction of a suspended deck / platform with glass balustrade. I do not consider that Policy L-P-1 precludes development with such areas as the development was to an existing residential property and other policies in the CDDP facilitates such developments such as RH-P-6 which considers proposals for '*the refurbishment, or replacement, or extension of an existing non-vernacular habitable dwelling*'. Therefore, I conclude that the development does not materially contravene the CDDP.

- 7.2.2. Policy RH-P-6 considers proposals for the refurbishment or replacement or extensions of an existing non-vernacular habitable dwelling, subject to Policy RH-P-9 and must be of a design, height, finish and of a scale and form such that it integrates effectively into the host landscape. I am satisfied that based on my inspection of the subject site that the fenestration changes from the original permitted extension is a modern design feature that successfully integrates into the design of the existing permitted extension to the house (Ref 2051402). I am also satisfied that the suspended deck /platform with glass balustrade at a location to the rear of the house has limited presence when viewed from the public domain and integrates effectively into the existing landscape.
- 7.2.3. The Planning history indicates that the existing house was constructed on foot of planning reference 97/1314 and therefore I do not consider that the existing house is a derelict traditional building and therefore Policy RH-P-7 of the CDDP does not apply.
- 7.2.4. I am satisfied, based on my site inspection, that the changes to the existing extension design for which retention permission is sought is designed in a manner that is sensitive to the character of the rural area within which it is located and successfully assimilates into the existing receiving environment. Therefore, I consider that the development to be retained complies with Policy RH-P-9 of the CDDP.

- 7.2.5. I am satisfied, based on a site inspection that the fenestration changes and the suspended deck / platform with glass balustrade comply with the provisions of the County Donegal Development Plan 2024-2030 and therefore I conclude that the development for which retention is been sought is acceptable in principle.

### **7.3. Residential Amenity**

- 7.3.1. The fenestration changes to the permitted development relate to a corner window along the northeastern end of the extension and a sliding patio door onto the decking area which is located to the southwestern end of the extension. I note that the corner window is 10.4m from the adjoining boundary to the appellant's property and from my inspection of the subject site I note the presence of landscaping along this boundary. From the details submitted I note that the finished floor level of the permitted extension and decking area is 0.67m lower than the appellant's dwelling. From inspection of the site, I note that the corner window element that orientates towards the boundary looks onto an existing courtyard area to the side of the existing extension, which is landscaped on the applicants side, at the boundary. Therefore, based on my site inspection, on the orientation of the corner window, floor level difference and boundary treatment I conclude that the corner window would not overlook the appellant's property such as to have any significant impact on residential amenity.
- 7.3.2. From my inspection, I note that the sliding door opens onto the decking area along the southwestern end of the extension and facilitates access from the house onto the decking area to existing seating areas and fire pit area established along the southwestern side of the property. From my site inspection, I consider that the main amenity space is provide at the southwestern end and that the sliding door facilitates access to this amenity space. I am satisfied, based on my site inspection that this seated amenity space offers no overlooking of the appellants property.
- 7.3.3. However, the decking area extends a further 3.5m in a northeasterly direction from the sliding door towards the appellant's property. I note from my site inspection that it does not extend over the whole length over the rear extension, curtailing 2.5m from the northeastern end of the extension. The distance between the end of the decking and the boundary to the appellant's property is 12.4m. I am satisfied based on my inspection of the site that, the distance from the decking to the adjoining site

boundary, the difference in levels (decking at same level as the extension), and the 2.5m setback from the end of the extension, provides no significant opportunity of overlooking the rear of the appellant's property.

- 7.3.4. I conclude, based on my assessment above and from a site inspection, I consider that the fenestration changes to the permitted extension and the decking area with glass balustrade is designed to maximise the views at this coastal location, whilst orienting the design to provide for an outdoor amenity space to the southwest of the site. Having regard to this fact and the separation distances from the decking area to the site boundary and appellant's property, including the relative levels and screening provided, I conclude that no issues arise in relation to loss of privacy, overlooking or residential amenity of the appellant's property.

## **8.0 AA Screening**

- 8.1. The proposed development is for alterations to the fenestration to the rear elevation of the extended house, including installation of sliding doors and the erection of a suspended deck / platform with glassed balustrade. There are currently no pathways between the site and any European Sites and having regard to the scale of the proposal I do not consider there is any potential for any significant effects on any European Site.
- 8.2. Having regard to the nature, scale, and location of the proposed development, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **9.0 Recommendation**

Having regard to the foregoing, I recommend that permission is granted subject to conditions hereunder.

## **10.0 Reasons and Considerations**

Having regard to the nature and extent of the development to be retained, the design characteristics and proximity, separation distances and relative levels to adjoining

residential properties and the provisions of the County Development Plan 2024-2030. It is considered that subject to compliance with conditions set out below, the development to be retained would not negatively impact on the landscape character of this rural area or on any residential amenities of adjoining property, and therefore, be in accordance with the proper planning and sustainable development of the area

## 11.0 Conditions

- 1) The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 15th day of November 2024, 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) (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

**Reason:** To prevent flooding.

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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Alan Di Lucia  
Senior Planning Inspector

7th April 2025

# Form 1

## EIA Pre-Screening

<b>An Bord Pleanála</b> <b>Case Reference</b>	ABP-321699-25		
<b>Proposed Development</b> <b>Summary</b>	alterations to the fenestration to the rear elevation of the extended house, including installation of sliding doors and the erection of a suspended deck / platform with glassed balustrade		
<b>Development Address</b>	Fanaghans, Inver, Co. Donegal		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	Tick if relevant and proceed to Q2.
		<b>No</b> √	Tick if relevant. No further action required
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>	Tick/or leave blank	State the Class here.	Proceed to Q3.
<b>No</b>	Tick/or leave blank		Tick if relevant. No further action required
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>	Tick/or leave blank	State the relevant threshold here for the Class of development.	EIA Mandatory EIAR required

<del>No</del>	Tick/or leave blank		Proceed to Q4
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<del>Yes</del>	Tick/or leave blank	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)

<b>5. Has Schedule 7A information been submitted?</b>		
<del>No</del>	Tick/or leave blank	<b>Pre-screening determination conclusion remains as above (Q1 to Q4)</b>
<del>Yes</del>	Tick/or leave blank	<b>Screening Determination required</b>

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_