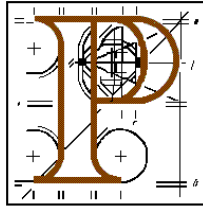


An Bord Pleanála



Inspector's Report

Development: Construction of storey and a half dwelling with effluent treatment plant.

Location: Tullyarvan, Buncrana, Co. Donegal.

Planning Application

Planning Authority: Donegal County Council
Planning Authority Reg. Ref.: 14/51195
Applicant: Malcolm McGee
Type of Application: Permission
Planning Authority Decision: Grant Permission

Planning Appeal

Appellant: Brendan McLaughlin

Type of Appeals: 3rd v Grant
Date of Site Inspection: 20th October 2015
Inspector: Dolores McCague

1 SITE LOCATION AND DESCRIPTION

- 1.1 The appeal site is located to the north of Bunrana, east of and close to Lough Swilly. The appeal site is located in the side garden of an existing dwelling; the applicant's parent's house. A laneway to the east of the house provides access to a single house and wooded lands where the site of a previous application/appeal by the first party (242669) is located.
- 1.2 The site is in Porthaw Glen on the outskirts of Bunrana to the northwest of the town. Porthaw Glen is an extensive wooded area, which straddles the Urban District boundary. The woodland is an attractive area of mixed broadleaf species including birch, hazel, oak and holly. It is largely uncultivated and a mixture of mature and shrubby trees with dense undergrowth. A narrow, public road, known as the Military Road, leads through the Glen down to the shores of Lough Swilly and Ned's Point Military Fort. A jetty, the RNLi Lifeboat Station and the Inishowen Sub-Aqua Club are located at the shoreline. There is a public footpath along the shore, which leads out from the town via Bunrana Castle to Stragill Beach to the north. The overall character of the area is wooded and natural and in contrast to the growing residential character of the area leading out from Wilson's Bridge to the Military Road. There are two pockets of housing on the Military Road. At the location of the subject site there are a number of houses; and near the shoreline to the north of the road there are a number of houses. Most of these dwellings are not visible from the public road or from the footpath along the foreshore, as they are screened by bands of woodland.
- 1.3 What appears to be original woodland forms a band of trees along the roadside boundary, the western boundary and the northern boundary. The existing dwelling is served by a bored well water supply and on site effluent disposal system. The bored well location is not identified but a well is identified on this site in the previous application, 242669, between the northern gable of the proposed dwelling and the site boundary. Outcropping rock is a feature of the area and outcropping rock was noted, on the date of inspection, within the landholding to the east of the parents' dwelling. Ground levels fall to the west and north-west. A stream

(c 100m) to the north west drains to Lough Swilly (c 400m distance).

- 1.4 The site is given as 0.21ha.

2 PROPOSED DEVELOPMENT

- 2.1 The proposed development comprises construction of what is described as a one and a half storey dwelling and installation of a wastewater treatment system.

- 2.2 The proposed dwelling is a large two storey dormer style dwelling with a floor area of 265sqm and a ridge height of 7.426m. The dwelling features a pitched roof with front and rear gable projections. External wall finishes appear to be render for most areas; with extensive areas of feature stone or similar to the front. Water supply is from a private well. A mechanical aeration treatment plant and a sand polishing filter are proposed for wastewater treatment.

3 PLANNING AUTHORITY DECISION

- 3.1 The planning application was lodged on the 7th October 2014.

- 3.2 DAU – 10 November 2014 – this Department is of the view that the proposal could damage/destroy the habitat old sessile oak woods with Ilex and Blechnum in British Isles, which is a habitat type listed in annex 1 of the EU habitats Directive. Potential impacts would be caused by the:

Damage/ destruction of the old oak woodland habitat as a result of the development.

Deterioration of the water quality within the Special Area of conservation resulting from pollution from surface water run-off during site preparation and construction.

Deterioration of the water quality within the Special Area of Conservation resulting from pollution from surface water run-off post construction from the development.

Deterioration of the water quality within the Special Area of Conservation resulting from pollution/eutrophication caused by the wastewater treatment system.

Damage/ destruction to adjacent woodland habitat in the Special Area of Conservation due to inappropriate site preparation and construction techniques. There has been no assessment of the potential ecological implications arising from this development therefore it is not possible to adequately assess the impacts to the Lough Swilly SAC site no. 002287. It is recommended that the applicant be requested to provide additional information to address the concerns outlined. Appropriate Assessment is required, focusing on the potential impacts in view of the site's conservation objectives (qualifying interests) and should include measures to avoid / reduce mitigate any such impacts. The Department has had pre-planning consultation with the applicant. It is noted that the proposed development site consists of the domestic lawn and garden associated with the applicant's father's dwelling. This consists mainly of a grass lawn with a number of ornamental trees and bushes. There are some native trees present. The Department acknowledges that the lawn and garden were developed prior to the designation of the SAC. The lawn/garden does not support any old oak woodland habitat and is not of significant ecological interest. The Department has no objection in principle to the development of a dwelling house at this location.

Mitigation measures are recommended:

The footprint of the development should be confined to the domestic lawn and garden. All works should be confined to the site. Site development works should adhere to best practice. No infilling or encroachment onto nearby woodland habitat within the SAC should occur. All waste associated with the development should be disposed of in an environmentally friendly manner.

Site preparation and construction should adhere to best practice and should conform to the Inland Fisheries Ireland Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites. Post construction surface water run-off from hardcore/concreted/tarmacadam areas should be directed into a soakpit. If soakpit disposal is not viable / practicable, then surface water run-off from these areas should be treated via serviced sediment and oil interceptor traps, prior to discharge into any stream/drainage channel that flows into the SAC. The proposed wastewater treatment system should conform

to the most recent EPA Guidelines. Any bulk fuel storage tank should be properly bunded with a bund capacity of at least 110% of the tank

Any external lighting associated with the development should not be directed into the adjacent woodland. Any landscaping and tree/shrub planting associated with the development should only be with locally occurring native species. A species list for planting should be approved by Donegal County Council, in order to prevent the introduction of potentially invasive species to the SAC.

- 3.3 Technical Reports
- 3.4 Planning Report 19th November 2014 – recommending further information.
- 3.5 Further information request – 20th November 2014 – 3 schedules – first schedule - proposals to provide sightlines at the site entrance 160m in each direction or alternatively to undertake an assessment of the average actual speed of vehicles using the road. Second schedule – concerns re impact on Lough Swilly SAC are listed. Third schedule – requesting NIS and publication of notices.
- 3.6 Response to further information request (partial) – 6th May 2015, including:
- 3.7 Report of screening for appropriate assessment. Surrounding the site to the south, adjoining the road, is a tall hedgerow of native trees and shrubs including hazel, gorse, willow, silver birch, downy birch, holly, blackthorn, sycamore, immature pines and larch. There is an existing entrance to the garden in this hedgerow which will be used to service the development. The habitats surrounding the site to the north, are dominated by oak woodlands, which correspond to the annex 1 habitat – Old sessile oak woods with Ilex and Blechnum in British Isles and which are located within the boundaries of the Lough Swilly SAC. These woodlands are best described under Fossitt as oak-birch-holly woodland. A narrow strip of native woodland, which is also within the boundary of the Lough Swilly SAC, separates the property from the adjoining property to the west, and contains a similar species complement

of trees and shrubs. An old stone wall, with ferns ivy and mosses, which marks the former field boundary, is found at the base of these.

There is no boundary to the east of the site which consists of open lawn.

Potential impacts include: no species of conservation interest present in the area proposed for development but care will need to be taken to protect the surrounding vegetation including the woodlands, the roadside hedgerow and mature trees adjoining the site. These will be retained and given protective measures.

The screening determined that there is potential for indirect impacts on the woodland habitats which adjoin the site boundaries and which form part of the qualifying interests of the SAC and that appropriate assessment is required.

A full NIS was therefore prepared. Among the mitigation proposals are: it must be recognised that the site is surrounded by natural woodland habitat and formal urban plantings using non-native species would not be appropriate in this context. Any species proposed for planting in the site must be approved by NPWS /Donegal County Council. The access track will be developed of hardcore, gravels, etc of local origin – the surrounding underlying geology consists of Precambrian quartzites, gneisses and schists. These areas should not be tarmacadamed. Any external lighting must be designed to ensure that the adjoining trees and vegetation are not illuminated in any way.

Appendices to the response include:

Letter from District Conservation Officer to Mr John McGee, referring to the fact that the garden lies within the North Inishowen Coast Special Area of Conservation (002012); that the (designation) appeal period has passed but that the District Conservation Officer can state that the area in question has no particular ecological value and as such the designation will have no bearing on how he wishes to manage his garden.

Letter from Site Designations and Plans Unit, NPWS, to Mr John McGee, referring to his lawn and garden being within the boundary of Lough Swilly cSAC (002287); that they are engaged in a process of moving from the older 6" map base to the ITM (Irish Transverse Mercator) for all SAC's; and that they intend to review the site boundary issue here as part of the programme.

Letter from Site Designations and Plans Unit, NPWS, to Mr Malcolm McGee, which includes recommendations for mitigating possible potential impacts to the Natura 2000 site:

- The footprint of the development should be confined to the domestic lawn and garden.
- All works should be confined to the site. Site development works should adhere to best practice. No infilling or encroachment onto nearby woodland habitat within the SAC should occur. All waste associated with the development should be disposed of in an environmentally friendly manner.
- Site preparation and construction should adhere to best practice and should conform to the Inland Fisheries Ireland Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites.
- Post construction surface water run-off from hardcore/concreted/tarmac areas should be directed into a soakpit. If soakpit disposal is not viable / practicable, then surface water run-off from these areas should be treated via serviced sediment and oil interceptor traps, prior to discharge into any stream/drainage channel that flows into the SAC.
- The proposed wastewater treatment system should conform to the most recent EPA Guidelines.
- Any bulk fuel storage tank should be properly bunded with a bund capacity of at least 110% of the tank
- Any external lighting associated with the development should not be directed into the adjacent woodland.
- Any landscaping and tree/shrub planting associated with the development should only be with locally occurring native species. A species list for planting should be approved by Donegal County Council, in order to prevent the introduction of potentially invasive species to the SAC.

Letter from well drilling company, referring to potential hydrochemistry of potential well supply.

- 3.8 Planning Report 15th June 2015 – item 1 of the further information request remains outstanding.
- 3.9 Further information response (final) – 22nd June 2015 – 70 m sightlines shown on a drawing; traffic survey 4th May 2015 at three points A – 75m SW of the proposed entrance, B - proposed entrance, C - 75m NE of the proposed entrance; average speed recorded 46.99 km/hr (max speed recorded 57.96 km/hr). in accordance with table 23 of the Donegal County Development Plan vision lines of 70m should be provided. Attached is a letter from Colm McGee consenting to the maintenance of sight lines.
- 3.10 Planning Report 11th August 2015 – recommending planning permission.
- 3.11 Decision to grant planning permission 13th August 2015 – subject to 16 conditions.
- 3.12 The decision was in accordance with the planning recommendation.

4 PLANNING HISTORY

To the north of the subject site.

08/90076: Permission sought by Malcolm McGee for a two-storey dwelling and wastewater treatment plant; application was withdrawn.

07/90083: Permission sought by Malcolm McGee for a dwelling and wastewater treatment plant; application was withdrawn.

PL40.242669, PA Reg. Ref. 12/90025 (which accompanies the subject file) – The Board refused permission, to Malcom McGee, following the planning authority’s decision to refuse, for the erection of a dwelling with effluent treatment plant, to the north, for the following reason:

Having regard to the location of the proposed development within (i) the confines of the Lough Swilly Special Area of Conservation and (ii) a wooded area identified as a habitat of conservation interest and having regard to the nature of the proposed development, which entails the construction of a dwelling, which would result in ground disturbance and loss of sensitive trees and vegetation including Sessile Oak, and having regard to concern regarding the potential for pollution of the aquatic environment as result of poor drainage conditions on site together with the proposal to install a wastewater treatment system, it is considered that the proposed development would have a significant and adverse impact upon the integrity of the designated site and would be contrary the EU Habitats Directive (92/43/EEC) Article 6(3). Furthermore, the proposed development would be contrary to Policy BNH4, as set out in the Buncrana and Environs Plan 2008 – 2014, which seeks to ensure the protection of designated nature conservation sites including Special Areas of Conservation (SAC’s). The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

PL.40.130178, planning authority reg. ref. no. P02/10 (which accompanies the subject file) – The Board refused permission, to Peter McLaughlin, following the planning authority’s decision to grant permission, for the erection of a dwelling and septic tank, to the north east of the subject site, for the following reason:

Having regard to the wooded character of the site and its location partially within the proposed candidate Special Area of Conservation (an area of natural woodland with well developed ground flora), it is considered that the proposed development, by reason of its impact on the proposed candidate Special Area of Conservation and its proximity to an extensive wooded area would seriously injure the amenities and integrity of this area. The proposed development would therefore be contrary to the proper planning and development of the area.

PL.40.122008, planning authority reg. ref. no. P02/10 (which accompanies the subject file) – The Board refused permission, to Victor Barker, following the planning authority’s decision to grant outline permission, for the erection of two dormer chalet type dwellings with biocycle waste water treatment systems and one dwelling with biocycle on a site to the south–west of the subject site: for two reasons:

1 Having regard to the location of the site within Porthaw Glen, an area of natural woodland with well-developed ground flora, and having regard to the close proximity of the site to this woodland, it is considered that the proposed development, by reason of its negative impact on the adjoining candidate Special Area of Conservation (which almost fully encloses the site) and on the woodland area, arising from disturbance and the cumulative pollution risk attached to multiple effluent disposal systems, would seriously injure the amenities and integrity of this area. The proposed development would, therefore, be contrary to the proper planning and development of the area.

2 Having regard to the location of the site in an area of distinctive rural and woodland character, which is designated as visually vulnerable in the current Buncrana Town Development Plan, it is considered that the proposed development would represent an undesirable encroachment of urban sprawl into a broadleaf woodland habitat, would erode the character of the area and, by itself and by the precedent it would create, would seriously injure the amenities of the area and of property in the vicinity (that is, the woodlands). The proposed development would, therefore, be contrary to the proper planning and development of the area.

5 GROUNDINGS OF APPEAL

5.1 The third party appeal against the decision to grant permission, submitted by the Buncrana Environmental Group c/o Brendan McLoughlin, can be summarised as follows:

- The Habitats Directive is clear that the condition of the site at the time of designation is the only relevant issue in deciding if

a site was (and still is) correctly designated. The NIS, consultation with DoAHG and Appropriate Assessment, seek to re-draw the boundary of the SAC. It is their understanding that the SAC boundary was drawn up by a reputable ecologist and it was drafted to include more than just the mature representations of annex habitats but also the associated juvenile stages of a habitat within the area of conservation interest. Accordingly scrub, woodland edges and open clearings are just as essential to the future preservation of Porthaw woodland as mature trees and they are essential to its survival into the future.

- The conditions imposed acknowledge the threat posed by this development.
- Re the conservation objective of the SAC to restore the favourable conservation condition of otter – otters are known to range over a wide area adjacent to their territorial watercourse (3km +). The presence of a house with noise, light and visual pollution can create a blockage within the foraging range of otters residing in a woodland area.
- Re the conservation objective of the SAC to restore the favourable conservation condition of old oak woodland – the development of a house and associated sewage works within and adjacent to the old oak woodland does not fit with achieving these stated objectives. If previous planning history and related applications is relevant they consider that Porthaw wood has reached its cumulative development threshold and that granting permission for further development within the woodland will undermine its ability to maintain its conservation value and that one off housing negatively affects its ability to regenerate due to fragmentation and creation of artificial boundaries as well as increasing the probability of a major pollution incident in the woodlands watercourses / water table. The proposed development is located between two existing developments, which lie adjacent to the access road dividing the two largest blocks of oak woodland. The proposed development would create a continuous line of ribbon development along the road corridor reducing overhanging vegetation and woodland continuity and restricting animal movements and further fragmenting the woodland habitat.

- The value of the woodland outwith the SAC designation – the National woodland Survey, referred to in the NIS gave the woods the top rating of excellent for its conservation value and an overall score that places it as the 28th best wood in Ireland. This woodland is one of five native woodlands that lie within the 90,000 ha that make up the Inishowen peninsula which has an acknowledged low level of native tree cover.
- Conditions regarding native species and introduction on non-native garden plants – the Council does not have sufficient knowledge or legal power to enforce such conditions; and has failed to so do in the SAC.
- The listed conditions are almost impossible to implement.
- Open areas adjacent to mature oak woodlands should allow for regeneration through increased light levels and buffer against damage, or set off the nature landscape with sympathetic land use, such as agriculture fields and other green spaces. Planning should support this stance and not undermine the future of a habitat which is essential to the favourable conservation status of a Natura 2000 site.

An appendix attached to the grounds lists the planning history of the general area.

6 RESPONSES

6.1 Planning Authority Response.

6.2 The Planning Authority has not responded to the grounds of appeal.

6.3 First Party Response.

6.4 The First Party has responded to the grounds of appeal, including: It has been clearly shown that the applicant's father's lawn should never have been designated. Pre planning involved a site visit by a NPWS Wildlife Service Ecologist and the local Wildlife Ranger.

- 6.5 NPWS have acknowledged that the lawn was there prior to designation. NPWS are looking at redrawing boundaries.
- 6.6 Re the possibility of otters in the area, first party has lived in this area most of his life and has never seen or heard tell of an otter anywhere near this site.
- 6.7 Re conditions almost impossible to implement, first party intends to fully abide by any conditions set down. He has a housing need. A previous application on a less suitable site on family land was recently turned down.
- 6.8 First party has noticed a number of inaccuracies in appendix 1 (list of planning histories of the area) to the grounds which he lists.
- 6.9 A number of other successful applications in the Blackfarm area, which is approx. 400m from the site and also on the edge of the woodland area, are not included in the list. First party refers to application no. 10/70226, Donegal County Council, 400m from his site with many similarities to his application and which therefore may have set a precedent.

7 POLICY CONTEXT

- 7.1 The Buncrana & Environs Development Plan 2014-2020 is the operative plan.
- 7.2 The site is zoned '*established development*' with the objective '*to ensure the protection of the character and biodiversity of established areas and to allow for new development that is both appropriate and orderly in the context of the established area*'.
- 7.3 In the plan zoning a substantial area in the north-western part of the urban area, an area west of a line which runs north from Buncrana castle, the zoning is 'coastal protection area' with the objective '*to conserve and protect the scenic landscape character of these coastal lands*'; this area surrounds the subject site. The

coastal protection area has scattered within it existing house sites where pockets of land are zoned '*established development*'.

7.4 Ned's Point, at the end of the Military Road, is zoned for mixed use identified as having potential for sensitive development as a tourist facility given its scenic location.

7.5 The plan identifies the key physical, social, cultural and economic opportunities and issues to be addressed as including:

The need to promote Buncrana as a Development Centre, with a Tourism focus.

The need to plan against urban sprawl and provide for the sequential growth of the town.

The need to protect the environmental assets of the town and its environs.

7.6 The plan considers three alternative development scenarios: alternatives 1 and 2 which include as key principles, that '*A proportion of Porthaw, Buncrana Castle and its environs and coastal lands in this area would be identified to ensure that no further development takes place.*' The selected strategy, alternative 3 includes as a key principle: '*High level of environmental protection in line with the Habitats Directive and to support the CDP 2012-2018 core strategy of concentrating development in the core of the town*'.

7.7 The Core Strategy Objectives include:

- To safeguard and improve the quality of all surface, ground and coastal waters in accordance with the North West River Basin Management Plan.
- To protect and enhance the character of Buncrana's built heritage and its scenic coastal setting, as an important historic and economic resource to enhance trade, tourism and employment opportunities.

- To identify and harness cultural and heritage assets of Buncrana and to ensure the sustainable use of identified important resources.

7.8 The chapter on natural heritage notes that ‘the area of the Buncrana & Environs Development Plan is host to many natural heritage resources in the form of special designations (SAC’s, SPA’s and pNHA’s), woodland areas, shorefront, tree lined rivers and parkland. These resources are important environmental assets in the town and contribute to the quality of life and character of Buncrana, which is particularly important in attracting tourism. The protected sites include the wooded valleys that follow the Mill and Crana Rivers into Lough Swilly. Porthaw Glen is also an important natural habitat, which has European protection, i.e. SAC. The Swilly shoreline has a number of important designations, including SAC, SPA and pNHA. It is also a designated shellfish water and has a Blue Flag beach at Lisfannon.

7.9 Natural Heritage Objectives include:

- To protect, the rich biodiversity of Buncrana for present and future generations.
- To comply with Article 6 of the Habitats Directive (92/43/EEC) and have regard to the relevant conservation objectives, management plans, qualifying interests and threats to the integrity of Natura 2000 sites.
- To maintain the conservation value of all existing and/or proposed SAC’s, SPA’s and pNHA’s and RAMSAR sites including those plant and animal species that have been identified for protection.
- To protect and improve the integrity and quality of Designated Shellfish Waters, and the North West River Basin Management Plan.
- To protect the character of the landscape where and to the extent that, the proper planning and development of the area requires it, including the preservation of views and prospects and the amenities of places and features of natural beauty or interest.

- To ensure where appropriate the protection and conservation of hedgerows, stone walls and traditional field boundaries as natural heritage corridors and migration routes for wildlife where they are shown to play a significant heritage role.

7.10 Natural Heritage Policies include:

- It is policy of the Council to ensure development proposals do not damage or destroy any sites of international or national importance, designated for their wildlife/habitat significance.
- It is the policy of the Council to ensure the protection of Natura 2000 sites in accordance with Article 6 of the Habitats Directive (92/43/EEC) and to have regard to the relevant conservation objectives, qualifying interests and threats to the integrity of these designated areas including areas designated as such during the lifetime of the plan.
- It is the policy of the Council to require the consideration of designated Shellfish Waters and their Shellfish Pollution Reduction Programmes in all development proposals within their catchments and to ensure the implementation of identified measures within Pollution Reduction Programmes including periodic review.
- It is the policy of the Council to safeguard and enhance the local landscape and natural environment, including the seascape, by ensuring any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of the area.
- It is the policy of the Council to take into consideration any Landscape Character Assessment that is carried out for the County.
- It is the policy of the Council to preserve the views and prospects of 'Special Amenity Value and Interest' as shown in the Land Use Zoning Map 1A.
- It is the policy of the Council to require the consideration of the impact of potential development on habitats of natural value that are key features of the area's ecological network and to incorporate appropriate mitigating biodiversity measures into development proposals.
- It is the policy of the Council to retain and protect significant stands of existing trees/hedgerows/woodlands, and seek

increased planting of native trees, where appropriate, in new developments.

- It is the policy of the Council to seek protection of stone wall boundaries where they are shown to play a significant heritage role. Where the demolition of such stone walls is unavoidable, the reinstatement of stone walls at revised location/set back within site using agreed local materials and techniques will be required.
- It is the policy of the Council to conserve and protect the lands identified as 'Coastal Protection Area' on Map 1A, Land Use Zoning map, with the exception of appropriate agricultural or recreational development. Proposals for agricultural or recreational development within the identified area will be considered having regard to all material planning considerations, all other relevant policies of the Plan, National/Regional Guidelines and having regard to all environmental and conservation designations.

7.11 Council's strategy in relation to housing is to ensure that adequate provision is made to accommodate the projected growth in persons of an additional 1381 persons by 2018, in line with the Core Strategy of the County Donegal Development Plan 2012-2018. The most appropriate lands have been identified to supply the first phase quantum of need, totalling 33 hectares, and are identified.

7.12 The EPA document '**Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)**', advises on minimum distances from receptor to percolation area or polishing filter. Where depth of soil (CLAY; sandy CLAY (e.g. clayey till); SILT/CLAY) above bedrock is 1.2m to 3m, minimum distances to karst features is 15m and to a down-gradient well or where flow direction is unknown the minimum distance is 40 m (where the thickness of sandy CLAY is 1.2 m). Where bedrock is shallow (<2 m below invert of the trench), greater distances may be necessary, where there is evidence of the presence of preferential flow paths (e.g. cracks, roots) in the subsoil. Where bedrock is known to be karstified or highly fractured, greater depths of subsoil may be advisable to minimise the likelihood of contamination.

- 7.13 The EPA document ‘**A Risk-Based Methodology to Assist in the Regulation of Domestic Waste Water Treatment Systems**’, where they set out a methodology to enable them to adopt a risk-based approach to organising inspections of domestic waste water treatment systems (DWWTSs), as the body responsible for making a National Inspection Plan; states that the risk to human health from domestic waste water treatment systems (DWWTS) is significantly higher in areas with a high density of DWWTSs and inadequate percolation; and in vulnerable areas with private wells. Molybdate reactive phosphate (MRP) is the main pollutant posing a threat to the environment, particularly to surface water, either where there is inadequate percolation or where there is inadequate attenuation prior to entry of waste water into bedrock aquifers, particularly karstified (cavernous limestone) aquifers. While the cumulative pollutant load arising from DWWTSs will be insignificant compared to urban waste water treatment systems and agriculture at river basin scale, it can be significant in certain physical settings at small catchment scale. The threat posed by nitrogen from DWWTSs is low at catchment scale however, in exceptional circumstances, at site scale (a few hectares), a high density of DWWTSs can cause localised plumes with elevated nitrate concentrations in groundwater.
- 7.14 The report identifies areas at risk from septic tanks systems. This area is identified as at very high risk of water pollution (streams and wells) from MRP and pathogens in domestic waste water, via subsurface pathway; and at very high risk of water pollution (streams) from MRP and pathogens in domestic waste water, via surface pathway;

8 ASSESSMENT

- 8.1 The issues which arise in relation to this development are appropriate assessment, wastewater treatment and visual amenity, and the following assessment is addressed under these headings.

8.2 Appropriate Assessment

- 8.3 In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible

effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision on the proposed development. The process is known as appropriate assessment. In this regard a guidance document 'Appropriate Assessment of Plans and Projects in Ireland' was published by the DoEH&LG on the 10 December 2009.

- 8.4 The Natura Impact Statement submitted to the planning authority in response to a further information request refers to the need to protect the surrounding vegetation including the woodlands, the roadside hedgerow and mature trees adjoining the site; that these will be retained and given protective measures; and the existing entrance to the garden in the hedgerow will be used to service the development. However the Board should note that the proposal is not to use the existing entrance, which serves the existing dwelling, but to develop a new entrance.
- 8.5 The NIS proposes mitigation which includes controlling planting within the site by having Donegal County Council prepare a list of suitable species, proposals in relation to the driveway/ access track surfacing; and controlling external lighting.
- 8.6 I note the issues with regard to designation of part of the site within the SAC. I also note that the designated site borders the site to the north and west, which designation is not challenged.
- 8.7 The site adjoins and is within the protected site Lough Swilly SAC, site code 002287 designated for the protection of the qualifying features: Estuaries, Coastal lagoons (a priority habitat), Atlantic salt meadows, Old sessile oak woods with Ilex and Blechnum in the British Isles, and Otter.
- 8.8 The proposed development has the potential for impact on protected woodland, and on other qualifying features of this protected site which are water dependent.

8.9 Notwithstanding the proposed mitigation, it is my opinion that the Board cannot be satisfied that the proposed development will not impact adversely on the designated site, having regard to the loss of native woodland along the road frontage; the potential for adverse impact on surface water and groundwater, from the wastewater disposal system; and the increase in human activity. In addition there is potential for cumulative impact taking into consideration the existing residential development in the vicinity, as referred to in the third party grounds of appeal. There is also potential for further cumulative impact, from additional residential development in areas zoned '*established development*,' for which the proposed development could be considered a precedent. I consider that the potential impact on the designated site is a reason to refuse permission.

8.10 Effluent Treatment

8.11 The site characterisation report notes that rock was encountered in the trial hole at 1.2m depth. The site characterisation report states that the area is one of extreme groundwater vulnerability.

8.12 Minimum distances from the polishing filter to karst features or from any well, existing or proposed, are stated in the EPA document 'Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)'. These minimum distances are influenced by the depth to bedrock, the nature of the bedrock, i.e. whether karstified or highly fractured, and the presence of preferential flow paths (e.g. cracks, roots) in the subsoil.

8.13 The presence of small isolated outcrops of rock within the site area is noted in the site characterisation report, but these are not shown on the site map, neither is the existing well which serves the existing dwelling.

8.14 The geological survey office maps (gsi.ie) identifies this area as 'rock at or near the surface or karst', and the ordnance survey maps of the area show outcropping rock in the vicinity of the site.

- 8.15 The EPA document 'Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)' advises on minimum distances from receptor to percolation area or polishing filter. Where depth of soil (CLAY; sandy CLAY (e.g. clayey till); SILT/CLAY) above bedrock is 1.2m to 3m, (1.2m in this case) the polishing filter should be a minimum of 40m from a well downgradient and a minimum of 25m from a well alongside (no gradient).
- 8.16 The site characterisation report notes that the proposed well is upgradient and approximately 35m from the treatment area. Although there are no details of piezometric tests, having been carried out to establish the direction of groundwater flow, it is likely, given the fall of the land and the stream to the north, that the proposed well is upgradient. The location of the existing well is not indicated on the application documents but it was indicated on the previous appeal documents on 242669 where it is shown north of the gable of the proposed dwelling c 24m from the polishing filter; which could be described as being alongside (no gradient).
- 8.17 Notwithstanding the proposal to utilise a package treatment plant with sand polishing filter, having regard to the extreme vulnerability of the bedrock aquifer, its use for bored well water supplies in close proximity to the discharge point, the proximity of the surface water drain to the north, which discharges a short distance away to Lough Swilly and the location of the site surrounded by a designated site which has water dependent qualifying features; it is considered that the subject site is unsuitable for the treatment and disposal of effluent and that this should be a reason to refuse permission.

8.18 Visual Amenity

- 8.19 The subject site is located in an area of scenic amenity, in the natural ancient woodland at Porthaw Glen, along a public road leading to Lough Swilly's shoreline where the historic feature, Ned's Fort is located and which is designated for sensitive development as a tourist facility given its scenic location. The substitution of a large dwelling along this road frontage, for the natural woodland which currently forms the frontage would have significant adverse impact on the visual amenities of the area and

be contrary to core objectives of the development plan to protect and enhance the character of Buncrana's built heritage and its scenic coastal setting, as an important historic and economic resource to enhance trade, tourism and employment opportunities; and to identify and harness cultural and heritage assets of Buncrana to ensure the sustainable use of identified important resources.

9 RECOMMENDATION

In accordance with the foregoing assessment, I recommend that planning permission be refused for the following reasons and considerations.

10 REASONS AND CONSIDERATIONS

- 1 On the basis of the information provided with the application and appeal the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site No. 002287, Lough Swilly SAC, in view of its conservation objectives. In such circumstances the Board is precluded from granting approval/permission.
- 2 Having regard to the shallow depth of soil, the presence of outcropping rock within the site and the surrounding area, the use of private bored wells for water supply and the environmental sensitivity of the area, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the site can be drained satisfactorily by means of a septic tank, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would pose a risk of water pollution, be prejudicial to public health and would, therefore, be contrary to the proper planning and sustainable development of the area.
- 3 It is considered that the development of a large two storey dwelling visible from the public road, together with the loss of

natural woodland currently forming the road frontage, where the road provides access to shoreline amenities enjoyed by the public, would have significant adverse impact on the visual amenities of this scenic area, and would be contrary to core objectives of the development plan to protect and enhance Buncrana's built heritage and scenic coastal setting, and to make sustainable use of its cultural and heritage assets for tourism and employment. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Dolores McCague
Inspectorate

Date

Appendix	1	Map and Photographs
Appendix	2	Extracts from the Buncrana & Environs Development Plan 2014 -2020
Appendix	3	Site synopsis for Lough Swilly SAC site code 002287
Appendix	4	Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)
Appendix	5	A Risk-Based Methodology to Assist in the Regulation of Domestic Waste Water Treatment Systems, EPA, 2013