



An  
Bord  
Pleanála

## Inspector's Report PL07.249274

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<b>Development</b>	Construction of dwellinghouse, garage, treatment unit and associated services
<b>Location</b>	Ballyturin, Gort, Co. Galway
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	17/946
<b>Applicant(s)</b>	Raymond Glynn
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Raymond Glynn
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	6 <sup>th</sup> of December 2017
<b>Inspector</b>	Angela Brereton

## 1.0 Site Location and Description

- 1.1. The application site has a stated area of .525 ha. It is located in the townland of Ballyturin which is approx. 4.6kms to the south east of Gort on elevated land on the west side of the L4516 local road which is adjacent to Ballyturin Lough. Farm buildings are to the north west and the farmhouse, which is stated to be the applicant's family home is on the road frontage to the north side of the former Derrybrien N.S, the parking area of which adjoins the northern side boundary of the appeal site. There are warning signs for the school close to the steeply sloping entrance to the site.
- 1.2. There is an embankment ditch and hedgerow/mature trees along the front boundary with the road. There is a field entrance at the southernmost end which opens onto a recently constructed gravel track that transverses the site. Fencing is located along at the rear/west side of the site. The land is undulating and steeply sloped eastwards towards the road. The proposed siting for the house is to be further set back than that previously refused and is on a flatter area which is lower than the larger field area to the south east. Therefore, in view of the siting the visibility of the proposed house from the road will be less than that previously refused.

## 2.0 Proposed Development

- 2.1. This is for the construction of a dwelling house, garage, treatment unit and all associated services.
- 2.2. The application includes the following:
  - Drawings include a Site Layout Plan, Floor Plans and Elevations
  - Documentation relative to the applicant's local needs
  - A Site Characterisation Form
  - Visual Impact Assessment
  - AA Screening Assessment (Stage 1)

### 2.3. **Planning Authority Decision**

### 2.4. **Decision**

On the 23<sup>rd</sup> of August 2017 Galway County Council refused permission for the proposed development for 5no. reasons. These are summarised as follows:

1. The proposed siting would be visually prominent in this elevated landscape and the proposal would contravene materially Objective RHO9 and DM Standard 6 of the Galway CDP 2015-2021.
2. The proposed development has the potential to indirectly impact on the conservation objectives and qualifying interests of Lough Citra SAC and Sliabh Aughty Mountains SPA and if permitted would materially contravene Objectives NHB1, NHB6 and DS6 of the Galway CDP.
3. The proposal would endanger public safety by way of traffic hazard, and the existing access and access track do not have the benefit of planning permission. It would constitute haphazard and disorderly development.
4. The proposed development would be prejudicial to public health and contrary to Objective WW5 of the Galway CDP.
5. The subject site is located in an area of strong urban influence and the applicant has not satisfactorily demonstrated their Housing Need and therefore the requirements of Objective RHO 1 have not been met, it would materially contravene this policy and be contrary to the ministerial Sustainable Rural Housing Guidelines 2005. It would set an undesirable precedent for similar future development in the area and be contrary to the proper planning and sustainable development of the area.

### 2.5. **Planning Authority Reports**

#### 2.5.1. Planner's Report

The Planner had regard to the locational context of the site and planning history and policy. They noted that no submissions were received. They had concerns relative to AA Screening in particular potential impact on the Natura 2000 sites, Lough Cultra SAC and the Sliabh Aughty Mountains SPA in view of the sites conservation

objectives and qualifying interests. They are concerned that sightlines have not been satisfactorily demonstrated and note issues regarding the disposal of effluent and quality of water supply. They considered that the proposed development by reason of its design, siting and location on an elevated site in conjunction with the loss of trees to the front to provide sightlines would interfere with the character of the landscape and would detract from the visual amenity of the area, would establish an undesirable precedent to similar future developments in the area. They also had concerns relative to the applicant's Housing Need and recommended refusal of permission.

### **3.0 Planning History**

3.1.1. The Planner's Report provides a planning history of the site and of applications within 100m of the application site. The following is the most relevant:

- Reg.Reg.16/823 – Permission Refused by the Council and subsequently by the Board (Ref PL07.247397 refers) for the Construction of a dwelling house, garage, treatment unit and all associated site works. This was refused by the Board for 2no. reasons which include: – the proposal on a steeply elevated site with limited set-back, would be visually prominent overlooking Ballyturin Lough within a sensitive rural landscape; and based on the information available and in the absence of a Natura Impact Statement, the Board was not satisfied that the proposed development would not impact adversely on the proximate Natura 2000 sites –Lough Cutra SAC and Slieve Aughty Mountains SPA.

A copy of this decision is included in the Appendix to this Report.

### **4.0 Policy Context**

#### **4.1. Galway County Development Plan 2015-2021**

Chapter 2 provides the Core Strategy for the County. This includes in Section 2.3 Development Strategy Objectives: Objective DS 6 – Natura 2000 Network and Habitats Directive Assessment.

Section 2.4 provides for the Core Strategy as an integral component of the Spatial Strategy and reference is also made to the Regional Planning Guidelines. S.2.4.8 refers to the Core Strategy and Settlement Hierarchy.

Section 2.6 refers to the Settlement and hierarchy. A Table is provided showing a six tier system. It is noted that the site located in the lowest tier of the hierarchy i.e Other Settlements and the Countryside. Section 2.6.5 notes that Gort is a Key Town within the hierarchy.

S.2.6.7 refers to Small Settlements and the Countryside/Rural Areas. Objective CS7 provides the Core Strategy for the Countryside and Rural Areas.

Chapter 3 refers to Urban & Rural Housing.

Section 3.7 refers to Single Housing in the Countryside and has regard to the distinction between urban and rural generated housing and the requirement for sustainable rural housing. S.3.8 identifies Rural Area Types – Map RH01 refers – the subject site is located in a Rural Area under Strong Urban Pressure. Section 3.8.1 refers and provides the objectives for such areas. As per S.3.8.3 the site would fall into Rural Housing Zone 1 – Rural Area under Strong Urban Pressure – GTPS. Objective RH01 refers. Section 3.9 provides the Rural Housing Policies and Policy RH01 is concerned with management of new single houses in the countryside. RH02 is concerned with Adherence to the Statutory Guidelines and CDP. RH09 refers to regard to the Design Guidelines for Single Rural House.

Chapter 5 refers to Roads and Transportation.

Chapter 6 includes regard to Wastewater Treatment Systems. Objective WW 5 refers to WWT associated with development in un-serviced areas.

Chapter 9 refers to Heritage, Landscape and Environmental Management Section Setion 9.8 refers to Natural Heritage and Biodiversity and includes regard to Natura 2000 sites. S. 9.9 provides the Natural Heritage and Biodiversity Policies and Objectives. NHB 1 and NHB 6 are of note. Designated Environmental Sites are provided in Map NHB1.

Landscape Sensitivity categories 1 (low) – 5 (unique), is referred to in S.9.10.2.3. The site is within the low sensitivity area.

Chapter 13 provides the Development Management Standards and Guidelines. DM Standard 1 refers to Qualitative assessments for urban and rural area. This includes reference to the DoEHLG Sustainable Rural Housing Guidelines 2005. Section 13.4 provides the Rural Residential Considerations and includes DM Standard 5 relative to Rural Housing need and DM Standard 6: Assimilation of Development into Landscape and DM Standard 8 relative to Landscaping.

DM Standard 20: Sight Distances Required for Access onto National, Regional & Local Roads.

DM Standard 21: Building Lines –this requires a set-back of 25m from Regional Roads.

#### 4.2. **The Sustainable Rural Housing Guidelines 2005**

This seeks to encourage and support appropriate development at the most suitable locations. Section 3.2.3 concerns Rural Generated Housing and gives an example of Persons who are an intrinsic part of the rural community and Persons working full-time or part-time in rural areas. Appendix 3 provides details of NSS Rural Area Types. Box 2 has regard to Stronger Rural Areas and Box 4 to Areas with clustered settlement patterns. Section 3.3 is concerned that the consideration of individual sites will be subject to normal siting and design considerations. These include the following:

- Any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard.
- That housing in un-serviced areas and any on site wastewater disposal systems are designed, located and maintained in a way, which protects water quality.
- The siting of the new dwelling integrates appropriately into its physical surroundings.
- The proposed site otherwise accords with the objectives of the development plan in general.

Section 4.4 is concerned with Access and regard is also had to Roadside Boundaries.

Section 4.5 is concerned with Protecting Water Quality and Site Suitability issues.

#### **4.3. Code of Practice Wastewater Treatment Disposal Systems serving Single Houses**

This document (2009) by the EPA relevant to single houses (p.e <10). The objective is to protect the environment and water quality from pollution and it is concerned with site suitability assessment. It is concerned with making a recommendation for selecting an appropriate on site domestic wastewater treatment and disposal system if the site is deemed appropriate subject to the site assessment and characterisation report. The implementation of the Code is a key element to ensure that the planning system is positioned to address the issue of protecting water quality in assessing development proposals for new housing in rural areas and meeting its obligations under Council Directive (75/442/EEC).

#### **4.4. EU Water Framework Directive**

The purpose of the EU Water Framework Directive (WFD) 'is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

(a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;

(b) promotes sustainable water use based on a long-term protection of available water resources;

(c) aims at enhanced protection and improvement of the aquatic environment, inter-alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;

(d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and

(e) contributes to mitigating the effects of floods and droughts'.

#### 4.5. **EU Habitat Directive**

The aim of the EU Habitat Directive is 'to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies'.

### 5.0 **The Appeal**

#### 5.1. **Grounds of Appeal**

5.1.1. Grealish Glynn & Associates have submitted a First Party Appeal on behalf of the applicant Raymond Glynn. This includes the following:

- They submit that having studied the reasons for refusal and the previous decision by ABP PL07.247397 that it is clear that the Council has not assessed the application fairly.
- The applicant has no other sites available to him and has designed the house specifically for this site in accordance with the Galway Rural Housing Design Guidelines.
- The Council have made assumptions regarding trees having to be removed which were not previously made by ABP.
- The significant tree cover and the revised siting/setback of the proposed dwelling, the reduced floor and ridge levels have reduced the visual impact.
- A visual impact assessment was submitted to address the concerns of ABP but was not referred to in the Planner's Report.
- They provide details of the revisions to the proposed design and layout and the revised setback and consider that it will have less of an impact than a standard rural dwelling with full frontage to a public road.
- The site is not within an SAC or SPA and they provide that the screening report submitted with the application (as recommended by the previous ABP decision) concluded that the proposed development will have no impact on protected areas or wildlife.



- They provide that 70m sightlines area available in either direction on this local road and that roadside trees will not be required to be removed to facilitate these sightlines (they include photographs showing the entrance). They would accept a condition that all mature trees be retained.
- Details are provided of the proposed changes to the location of the treatment unit and percolation area. New percolation tests have been carried out at the revised location and a copy of the revised site characterisation report is attached.
- There is sufficient potable water supply as the well is located beside a lake. Treatment proposals were also submitted with the application for magnesium removal.
- The site is located in the GTPS area so a housing need is required and they provide details of the documentation submitted to demonstrate the applicants housing need.
- The site is located in an area of rural decline and the National School to the east (Derrybrien) was one of the few in the country to be closed in 2016.
- They include a copy of the Visual Impact Assessment and a further details from Whitehall Environmental regarding the AA Screening Report. A copy of the Site Characterisation Form is also included.

## 5.2. Planning Authority Response

There has been no response from the Planning Authority to the grounds of appeal.

## 6.0 Assessment

6.1.1. I have reviewed the proposal in the light of national planning guidelines, the CDP, and the submissions of the parties. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Compliance with Rural housing policy
- (ii) Material Contravention
- (iii) Changes to Design and Layout
- (iv) Impact on Visual Amenity
- (v) Access

- (vi) Disposal of Effluent and Water Supply
- (vii) Screening for Appropriate Assessment

## 6.2. Compliance with Rural Housing Policy

- 6.2.1. As set out in Section 2.5 of the Galway CDP 2015-2021 the Core Strategy Objectives include the provision of a settlement Hierarchy for the county. Section 2.6.1 provides the Settlement Hierarchy which has been developed to allocate future population growth between the various towns, villages and the rural area of the County. As shown in the hierarchy table - Other Settlements and the Countryside are included in the bottom tier.
- 6.2.2. Having regard to Section 2.6.7 Small Settlements and the Countryside/Rural Areas it is considered that Sustainable Rural Housing policies would apply relative to single houses in the countryside. As shown on Map RHO1 the site is located to the east of the Key town of Gort in the area shown Rural Areas under Strong Urban Pressure (GTPS). Section 3.8.1 and 3.8.3 provide specific policies relative to such areas Rural Housing Zone 1 and Objective RHO1 refers. This policy includes those applicants with Rural Links to the area through long standing existing and immediate family ties seeking to develop their first home on existing family farm holdings.
- 6.2.3. As provided by the documentation submitted both with the application and subsequently with the appeal, the applicant is the son of the landowner and was born and grew up and went to school locally. The family are currently living in Australia, where they sold their house (they include documentation) and are living in rented accommodation, and are returning emigrants seeking to return to Ballyturin. He is a carpenter and his wife a registered nurse and they hope to be employed locally. A letter of consent has been submitted from his father Noel Glynn to apply for planning permission on this site within the family landholding. Land Registry and Folio Registry documents have been submitted and relative to a right of way on these lands. The location of the family home proximate to the site is shown.
- 6.2.4. The applicant provides that this is the only site available on the landholding. His children hope to attend Ballyturin N.S. and a letter is provided to support this. It is also noted that the school adjacent to the site (Derrybrien) was closed in 2016 due to rural decline. It is noted that Section 3.2.3 of the Rural Housing Guidelines refers to *Rural Generated Housing* and this includes support for returning emigrants who have

lived for substantial periods of their lives in rural areas. Objective RHO1 2(a) of the current GCDP also includes regard to returning emigrants: *Those applicants who lived for substantial periods of their lives in the rural area, then moved away and who now wish to return and build their first house as their permanent residence, in this local area. Special consideration will be given to one member of the immediate family of emigrants returning to this local area to live near their immediate family. Documentary evidence shall be submitted to the Planning Authority to illustrate their links to the area in order to justify the proposed development and it will be assessed on a case by case basis.*

- 6.2.5. It is noted that the Board's previous reasons for refusal relative to this site did not include relevant to local needs. I would consider that the applicant as a returning emigrant has established local ties to return to the family landholding, and that this would not be a reason for refusal in this case. In the event of favourable consideration of the proposed development, an occupancy condition should be attached.

### 6.3. **Material Contravention**

- 6.3.1. Section 34(6) of the Planning and Development Act 2000 (as amended) sets out the procedure under which a planning authority may decide to grant permission for such a development. Section 37(2) of the 2000 Act provides the constrained circumstances in which the Board may grant permission for a material contravention. These include whether the development is of strategic or national importance, where the development should have been granted having regard to regional planning guidelines and policy for the area etc, where there are conflicting objectives in the Development Plan or they are not clearly stated, or permission should be granted having regard to the pattern of development and permissions granted in the area since the making of the Plan.
- 6.3.2. In this instance the proposed development is clearly not of strategic or national importance, while restrictive, there is no policy or guidelines advising that such a development should be not permitted in this area. Regard is had to the documentation submitted and to the issues raised and to the relevant planning policies and objectives. The issue in this case is whether this proposal would constitute sustainable development, would not be detrimental to the amenities of the

area and whether the reasons of the Board refusal in Ref. PL07.247397 would now be overcome.

#### 6.4. **Regard to Design and Layout and Changes made since previous Refusal**

- 6.4.1. The application site has a stated area of .525ha. The stated area of the proposed dwelling house is 216sq.m and of the garage is 20.91sq.m. The proposed single storey (c.5.5m to ridge height) 4no. bed dwelling is designed in 3 sections, with the bedroom areas in two different sections linked by a central glazed passage area. External finishes include coloured render, local stone cladding and natural slate roof. The proposed detached garage is shown located close to the dwelling.
- 6.4.2. The following changes were made to the layout of the site and the design of the dwelling house since that previously refused by the Board in Ref. PL07.247397:
- The area of the site has been extended to the N.W and increased from .380ha to .525ha.
  - The dwelling house is set back a further 37m and is now 55.5m from the public road (18.5m is as previously shown).
  - The finished floor level is 1m lower and in view of the setback is 4.8m above the road. The Section now shows a FFL: 97.2m (as opposed to 98.3m previously shown).
  - The ridge height has been reduced by 1m giving a total reduction of 2m in total height (c.5.4m as opposed to 6.4m as previously shown).
  - The First Floor Plan has now been omitted so that the floor area has been reduced by 51.2sq.m.
- 6.4.3. I would consider that the revisions made including the setback will reduce the impact of the proposed single storey dwelling on the landscape and that the proposed house type would be acceptable and not contrary to Objective RHO9. The sections show that it is also proposed to include a cut and bund to the lake side of the house with landscaping to help to soften the architectural edges.

## 6.5. Visual Assessment and Impact on Landscape

- 6.5.1. The applicant provides that the Visual Impact Assessment submitted with the planning application addresses in detail the previous concerns of the Board and that reasons for refusal have been addressed. This notes that the site is located on an elevated site in Class 2 Landscape adjacent to Ballyturin Lough. The topography of the area is characterised by sloping farmland, with hedgerows and trees to the east.
- 6.5.2. Section 9.10 of the GCDP refers to Landscape Conservation and Management and Section 9.10.2.3 refers to Landscape Sensitivity. As shown on Map LCM2 the site is within a Class 2 Character Area which is described as Moderate Sensitivity. Map LCM1 showing Landscape Value Rating – shows the site within the Medium Rating Area. GCDP 2015-2021 includes regard to the Landscape and Character Assessment for the County 2002. The site is located within Area 6 – Slieve Aughty Mountains. This describes the area as of Medium Landscape Value within a Class 3 (High) Landscape Sensitivity. DM Standard 6 of the current GCDP provides for Assimilation of Development into Landscape.
- 6.5.3. The Visual Assessment submitted concludes that the while the site is elevated in view of the topography, views of the development will be limited. This provides that the siting of the proposed dwelling house uses the existing structures and planting in the vicinity to provide cover for the development and concludes that the development is only visible from a 31m stretch of road, which is less than a standard rural dwelling with full frontage to a public road. They include a number of viewpoints to show that having regard to the topography and revisions to the siting that the proposed house will for the most part not be visible from the local road, with the exception of a view to the south east from the frontage of the former school building.
- 6.5.4. Having regard to the Visual Assessment carried out, and having viewed the topography of the site, I would consider that the current proposal will have less of a visual impact on the area than that previously refused.

## 6.6. Access

- 6.6.1. There is an existing vehicular access to the site from the local road L-4516 located at the southern end of the site. The applicant provides that the proposed driveway follows an existing agricultural road which enters the site. The Planner's Report

notes that having regard to aerial photography this access and gravelled access road onto the lands appears to be relatively recent and does not have planning permission.

- 6.6.2. Regard is had to article 9 of the Planning and Development Regulations 2001 (as amended) which provides Restrictions on Exemption. This includes where a development would: (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width, (iii) endanger public safety by reason of traffic hazard or obstruction of road users. It is of note that the local road exceeds 4m in width. The description of development does not include retention of the entrance, rather *all associated services*. However, while the entrance and access road currently appear as an agricultural entrance to the agricultural lands, they are included within the redline boundary of the site and are therefore for consideration relative to the subject proposal. The Site Layout Plan shows that the internal farm roadway is to be moved. The revised siting means that this will be less impacted than previously shown.
- 6.6.3. It is noted that the entrance is more elevated than the public road. There are a number of trees located along the eastern boundary and it is provided that these are to be retained. The Site Layout Plan indicates that the removal of trees to achieve 70m sightlines applicable to the local road is to be kept to a minimum. The applicant provides they will accept a condition to retain these trees. It is also of note that the previous Board refusal did not include a reason relative to traffic safety at the access.
- 6.6.4. It is recommended in the interests of visibility and sightlines that if the Board decide to permit that it be conditioned that signage for the former Derrybrien N.S be removed from its location adjacent to the entrance, that a landscaping scheme be submitted relative to retention of boundary treatment, and that details of the access relative to residential and agricultural usage be submitted. It is considered that in the circumstances as the applicant is the son of the landowner that a shared usage of this entrance for both purposes may be considered.

## 6.7. Disposal of Effluent and Water Supply

- 6.7.1. A Site Characterisation Form has been submitted with the application. As originally submitted this provides that the depth of trial hole is 2.4m, and that water was not encountered. The average T test result was 21.22 and a P test was not carried out. According to the Mapinfo data, the subject site is not located within a source protection area of surface water. The groundwater vulnerability of the site is low and the site is underlain by a locally important aquifer (LI). The groundwater protection response for the site is R1. The Planner's Report noted that the Site Characterisation Form submitted under the previous application has been resubmitted and recommend that an up dated SCF be submitted.
- 6.7.2. The current application shows that the subject site has been extended at the rear and the location of the proposed wwts has been changed i.e moved 30m to the North West. A revised Site Characterisation Form has been submitted as part of the information submitted with the First Party Appeal. The depth of the percolation trial hole is given as 2.2 and the average T value as 28.97. In accordance with Table 6.3 of the *Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (p.e<10)* these results would indicated that the site is suitable for the development of a septic tank system or a secondary treatment system discharging to ground water. It is proposed to provide a packaged waste water treatment system on site and the location of the treatment unit and of a 105sq.m soil polishing filter in accordance with fig.8.3 of the EPA Manual (invert level 98.40) and a surface water soakaway are shown on the Site Layout Plan submitted.
- 6.7.3. It is desirable and in the interest of good practice planning practice for a separate dwelling unit of an individual site to be served by a single bored well unless there is an established community of public supply available. However, it would appear based on the results within the report provided by the applicant's agent on a pump test conducted at the bored well serving the family farm holding and dwelling that an adequate supply would be available for the proposed development. Chemical and bacteriological test results have been submitted with treatment details for high levels of manganese. A copy of a Wayleave Agreement to cross the farmlands to the existing well has been submitted and the route is shown in yellow on the Site Layout Plan submitted. The SCF provides that there are existing wells located 87m/120m

from the proposed percolation area. It is of note that no local authority internal technical report is available on this matter. However, it is considered that based on the documentation submitted that the site is suitable for the disposal of effluent and that there is adequate water supply which can be treated.

## **6.8. Screening for Appropriate Assessment**

- 6.8.1. The Board's second reason for refusal in PL07.247397 was concerned that in the absence of a Natura Impact Statement that the Board was not satisfied that the proposed development either individually or in combination would not be likely to have significant effects on the Lough Cutra SAC (000299) and the Slieve Aughty Mountains SPA (004168).
- 6.8.2. An AA Screening Report has been carried out by a qualified Ecologist and submitted with the current application. A description of the site location and habits in the area is provided. The proximity to Ballyturin Lake and to the Beagh (Tarry) River are noted. The eastern boundary and part of the southern boundary consists of a mature treeline/hedgerow, whilst the remaining boundaries consist of fences and hedgerows. It is provided that there is no protected plant or animal species within 1km of the site. However, the presence of invasive Japanese knotweed and the need for eradication in the wider area is noted.
- 6.8.3. The Planner's Report notes 24 European sites within 15km of the site. Section 3.3 of the AA Screening Report identifies and notes 15 Natura 2000 sites within 10km of the proposed development (Table 1 and Fig.4 relates). The closest sites are Slieve Aughty Mountains SPA (004168) - 360m to the north-east and Lough Cutra SAC (000299) and SPA (004056) – 700m west.
- 6.8.4. Section 3.4 provides the Assessment Criteria. This provides that in view of distance and the small scale of the development the construction and operation of the proposed development will have no impacts upon the integrity of the site structure or any of the designated site identified. It provides that there will be no run-off from the site directly to any Natura 2000 site. There are no source-pathway-receptor linkages between the application site and the aquatic habitats of identified SACs and this will eliminate the potential for emissions from the site to pollute the designated habitats. They provide that as part of the application, best practice measures will be



undertaken to ensure the protection of local surface water and groundwater quality. These measures will be undertaken during site preparation, construction and operation.

- 6.8.5. The features of special interest in Slieve Aughty Mountains SPA are the Hen Harrier and the Merlin. It is noted that the Site Synopsis provides that these birds will forage some distance from the nesting site. For Lough Cutra SAC it is the Lesser Horseshoe Bat a species listed on Annex II of the Habitats Directive. For Lough Cutra SPA it is the Cormorant and the Whopper Swan. The latter is listed on Annex 1 of the EU Birds Directive. Copies of the Site Synopsis including their qualifying interests for these Natura sites are included in the Appendix to this Report.
- 6.8.6. The Screening Assessment submitted provides that overall there will be no reduction or disturbance to any of the species listed in Annex I of the Birds Directive or Annex II of the Habitats Directive and these will not be adversely affected. It concludes that having regard to the location, nature and scale of the proposed development, it is considered that there is no potential for significant effects either from the proposed development on its own or in combination with other plans or projects.
- 6.8.7. The Planning Authority had concerns regarding the impact of the proposed development, in particular removal of trees or vegetation on merlin and bats and satisfactory disposal of surface water on site. In response to the Council's reason for refusal relative to this issue a further letter submitted with the appeal by Whitehall Environmental provides details and concludes that this proposal will not impact adversely on the qualifying interests of these Natura 2000 sites. Appendix 1 of the Screening Report includes Further Ecological Recommendations having regard to best practice.
- 6.8.8. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Sites: Slieve Aughty Mountains SPA (004168) and Lough Cutra SAC (000299) and SPA (004056) or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## 7.0 Recommendation

7.1. It is recommended that permission be granted subject to the conditions below.

## 8.0 Reasons and Considerations

8.1. Having regard to the documentation submitted and to the revisions made to the proposed development from that previously refused by An Bord Pleanála in Ref. PL07.247397, and to the undulating topography and pattern of development in the area it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 9.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and by the further plans and particulars received by An Bord Pleanála on the 19th day of September 2017, 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) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its

occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

- (b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason:** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

- 3.(a) The external wall finishes of the proposed dwelling shall be nap plaster, dry dash and/or natural stone, unless otherwise agreed in writing with the planning authority.
- (b) The roof of the dwelling shall be of a blue/black, black or dark grey colour (including ridge tiles).
- (c) The external finishes of the garage shall match those of the dwellinghouse.

**Reason:** In the interest of visual amenity.

- 4(a) The existing trees and hedgerows on site, including those along the roadside frontage shall be retained and only removed where necessary to achieve sightlines at the entrance to the site.
- (b) The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details including any replacement

boundary planting which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

- (c) Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

- 5. An ecological survey report detailing any measures required to ensure the protection of designated species during site development and building works shall be submitted to, and agreed in writing with the planning authority, prior to commencement of development. These protection measures shall be implemented as part of the development and any disturbance to designated species on site shall be in a manner to be agreed in writing with the planning authority on the advice of a qualified ecologist.

**Reason:** To ensure the protection of the natural heritage on the site.

- 6. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to An Bord Pleanála on the 19th day of September, 2017, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.  $\leq 10$ )" – Environmental Protection Agency, 2009. No system other than the type proposed in the submission shall be installed unless agreed in writing with the planning authority.

- (b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

- (c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the

dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakaways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

7. The water supply to serve the proposed dwelling shall have sufficient yield to serve the proposed development, and the water quality shall be suitable for human consumption. Details, demonstrating compliance with these requirements, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure that adequate water is provided to serve the proposed dwelling, in the interest of public health.

8. The recessed entrance to the public road, including gradients, wing walls boundary treatment and surface water arrangements, shall comply with the detailed standards of the planning authority for such works.

**Reason:** In the interest of amenity and traffic safety.

9. Prior to the commencement of development:

(a) Signage for the former Derrybrien National School adjacent to the entrance shall be removed.

(b) Details as to the usage of the entrance to the site and as to whether a joint agricultural/domestic use of the entrance is proposed shall be submitted for the written agreement of the planning authority.

**Reason:** In the interests of clarity and traffic safety.

10. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

**Reason:** In the interest of visual amenity.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Angela Brereton  
Planning Inspector

9<sup>th</sup> of January 2018