



An  
Bord  
Pleanála

## Inspector's Report ABP-302522-18

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<b>Development</b>	Construct a house on ruin of existing house and construct septic tank/percolation area
<b>Location</b>	Gortaskibbole, Knockmore, Ballina, co Mayo
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	18480
<b>Applicant(s)</b>	Padraic Crean and Marita Brogan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	John Ferguson
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	20 <sup>th</sup> November 2018
<b>Inspector</b>	Una O'Neill

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## **1.0 Site Location and Description**

- 1.1. The subject site is located between Ballina and Knockmore, in the townland of Gortaskibble, east of Lough Conn, in north Mayo, west of the R310. There are a number of dispersed rural houses in this area, primarily directly onto the R310.
- 1.2. The site is accessed via a track off an existing laneway, which has an access from the R310. There are 2 other dwellings with accesses directly onto the laneway, northeast of the site, in proximity to the egress onto the R310. The site, which has a stated area of 0.4034 ha, is currently under grass and comprises the ruins of an old stone cottage and a stone shed. The site, which is roughly rectangular in shape, slopes down from west to east with the existing cottage and shed at the eastern end of the site. The land continues to slope down to the east and then rise up again to the R310. The site is visible for a width of approx. 30m from the R310. The site outlined in red is part of a larger landholding, outlined in blue in the submitted documentation and owned by the uncle of Marieta Brogan (one of the applicants).

## **2.0 Proposed Development**

- 2.1. The proposed development comprises a new dwelling, 7.8m wide x 14.81m deep, with an overall height of 7.5m. The dwelling is of a single storey pitched roof form with attic level accommodation, windows at first floor level in the gable ends, and rooflights. The proposed floor area is stated to be 179.47sqm.
- 2.2. A conventional septic tank and percolation area is proposed for wastewater treatment, with an effluent pump to form part of the system. Surface water disposal is by means of a soakaway. Water supply is proposed by way of a new connection to the mains system on the R310, approx. 295m in length.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

GRANTED, subject to 13 conditions, including the following:

- C2: Occupancy

- C4: Finished floor level
- C5: Works to entrance from R310

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planning Officer's report generally reflects the decision of the Planning Authority.

#### 3.2.2. Other Technical Reports

**Mayo National Roads Design Officer:** No objection.

**Engineer Report:** No objection subject to conditions in relation to the access onto the R310 which shall be spayed and recessed, and surface water discharge.

### 3.3. Prescribed Bodies

None.

### 3.4. Third Party Observations

One objection was received from John Ferguson. The issues raised are covered in the grounds of appeal.

## 4.0 Planning History

**ABP PL16.249128** – Permission REFUSED for new dwelling.

**R1:** Having regard to the proposed removal of a significant part of a hedgerow and boundary wall to gain access to the site, as well as the topography of the site, it is considered that the proposed development would result in the loss of existing hedgerow and trees to the detriment of the rural character of the area, contrary to the Mayo Rural Housing Design Guidelines 2008 and the provisions of the Mayo County Development Plan 2014-2020, and would form a discordant and obtrusive feature on the landscape at this location. The proposed development would, therefore, seriously injure the rural character and visual amenities of the area, would fail to be adequately absorbed and

integrated into the landscape, would militate against the preservation of the rural environment and would set a precedent for other such prominently located development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**R2:** Having regard to the location of the site within an "Area Under Strong Urban Influence" as identified in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the Mayo County Development Plan 2014-2020, it is considered that the applicant has not adequately satisfied the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**P16/755** – Permission GRANTED for new dwelling houses. Application withdrawn on appeal.

**P08/1508** – Permission REFUSED to construct new dwelling, for reasons related to access onto strategic regional road, backland development and insufficient information in relation to traffic hazard.

## **5.0 Policy Context**

### **5.1. Sustainable Rural Housing, Guidelines for Planning Authorities (2005)**

- The subject site is located within an area designated as being 'Rural Areas under Strong Urban Influence' within these Guidelines.
- Section 3.3.3 deals with 'Siting and Design'.

### **5.2. Draft Regional Spatial and Economic Strategy (November 2018)**

- In relation to rural areas the draft RSES states ‘the NPF confirms that there needs to be a distinction made between areas under urban influence and elsewhere and it defines areas under urban influence as being effectively those areas within the 15% commuter catchment of Cities, Regional Growth Centres and the Key Towns. It confirms that the capacity to provide for single rural housing should be retained for those that have a demonstrable economic or social need to live in the area, subject to all other proper planning and sustainable development considerations. The management of these pressures is a matter for individual local authorities through the development plan process, having regard to the provisions of Ministerial Guidelines (Rf. Sustainable Rural Housing Guidelines for Planning Authorities 2005) and other material considerations , including environmental considerations, the pressure for housing, availability and adequacy of support infrastructure, suitability of soils to treat and dispose of wastewater to appropriate standard, visual and physical impact and the need to provide for house design and orientation that meet current and future energy efficiency demands’.
- Ballina is identified as a key town and it is a policy ‘to deliver significant compact growth in Key Towns’.

### 5.3. Mayo County Development Plan 2014-2020

#### 5.4. The following policies are of relevance:

**P-01:** It is the policy of the Council to ensure the sustainable development of the Linked Hub and Key Towns in the County and to manage development outside these towns in a way that ensures the viability of rural communities while ensuring environmental protection through the implementation of the objectives and Development Guidance document of this Plan.

**P-02:** It is the policy of the Council to support the sustainable development of the Linked Hub of Castlebar-Ballina to facilitate long term economic growth and a minimum population target of 28,700 persons by 2022 within the context of a high quality environment and to ensure that the towns are centres of economic growth to attract and support a wide range of services and amenities and deliver a high quality of life, thereby making the areas attractive

as places to work, live, visit and invest in, while ensuring no significant adverse effects on the environment including the Natura 2000 network.

**P-06:** It is the policy of the Council to support the sustainable development of the countryside and rural villages in the county.

The following rural policies are of relevance:

**RH-01:** It is an objective of the Council to ensure that future housing in rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 (DoEHLG), Map 1 Core Strategy Conceptual Map and the Development Guidance document of this Plan.

**RH-02:** It is an objective of the Council to require rural housing to be designed in accordance with the Design Guidelines for Rural Housing (Mayo County Council). Consideration will be given to minor deviations from the guidelines where it can be demonstrated that the deviation will not have an adverse visual impact on the landscape or on local residential amenity in the Area.

#### 5.4.1. **Volume 1:** Rural Area under Strong Urban Influence.

In an area located within an area defined as a 'Rural Area Under Strong Urban Influence', the applicant shall satisfy the planning authority that their proposal constitutes a genuine rural generated housing need based on their own roots in or links to a particular rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need:

- 2.3.1.1 Persons who are an intrinsic part of the local rural community due to their having spent substantial periods of their lives, living in the rural area in which they propose to build a home. This category refers to:
  - a. Farmers, their sons and daughters, a favourite niece/nephew (within the meaning of the Capital Acquisitions Tax Consolidation Act 2003) and/or any persons taking over ownership and running of a farm, who wish to build on the family farm holding (a farm holding shall consist of at least 4ha)
  - b. Sons and daughters of non-farming persons who have spent a substantial period of their lives (i.e. at least 5 years) living in the rural area on which

they propose to build and wish to build a home near their family place of residence (i.e. within 5km in any direction of family residence)...

#### 5.4.2. **Volume 2: Planning Guidance and Standards for Development in County Mayo**

**Access:** It is stated under section 16.1.4 that in order to protect existing and future capital investment in and the safety and carrying capacity of Strategically Important Regional Roads, development along such roads will be restricted outside the 60km/hr speed limits except: where such proposals, subject to a Road Safety Audit (see traffic assessments in Section 16.2 below), can demonstrate that they do not interfere with the traffic safety of the Strategically Important Regional Road and comply with the categories listed hereunder:

- a) The provision of a new dwelling house for farmers, their sons or daughters, a favourite niece/nephew and/or any persons taking over ownership and running of a farm, who wish to build on the family farm holding (a farm holding shall consist of at least 4Ha) where a suitable vehicular access cannot be created from another roadway or utilising an existing access
- b) The provision of a new dwelling house where an existing inhabited dwelling house is in need of replacement and provided the existing house will not be used for further habitation...

#### 5.5. **Mayo Rural Housing Design Guidelines 2008**

The rural house design guide aims to encourage the use of traditional forms, scale and materials that have a proven history of blending into the landscape.

#### 5.6. **Natural Heritage Designations**

The River Moy SAC (Ref. 002298) is located approx. 2km to the east of the subject site. Lough Conn and Lough Cullin SPA is located approx. 3km to the west of the subject site.



## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The appellant, John Ferguson, lives to the east of the appeal site, directly adjoining the R310 and with an access from it. The following is a summary of the grounds of appeal:

- This application was refused by An Bord Pleanála previously under reference PL16.249128. The reasons for refusal have not been overcome.
- The proposal remains visually obtrusive and a discordant feature on the local rural landscape.
- The proposal constitutes urban based pressure for a residential dwelling and the applicant does not satisfy a local rural need for housing. The applicants both work and live in Ballina and attended secondary school in Ballina.
- The proposal is flawed on grounds of access and traffic. Works are proposed to the entrance which are outside the red line boundary. The proposal would set a precedent for further development at this location and has the potential to act as a precedent for development of further houses along this historic access laneway which connects further south onto a local road. The proposal and any future housing would result in uneconomic demands for services and local infrastructure on a currently undisturbed rural landscape.
- Works are proposed to this access road, which have not been included within the red line for the application and therefore procedurally cannot be undertaken. The proposal would affect the carrying capacity of the R310.
- The proposal is unclear in relation to what impact it will have on the existing laneway boundary. The proposal will remain visually obtrusive at this location.

### **6.2. Applicant Response**

The applicant has responded to the grounds of appeal as follows:

- Permission is being sought to construct a first home on lands which have been in the ownership of Marietta's family for at least four generations. The dwelling is to be situated on the footprint of the ruin of the old family homestead which dates back to the mid-19<sup>th</sup> century and was last occupied in the 1970s.
- Documents are submitted to prove a genuine housing need.
- The width of the access lane into the site has been changed to 2.8m so that no hedgerows/stone walls or trees will be removed with no impact on the landscape. There may be a section at the northern end which will involve a section of stone wall being relocated to facilitate increase in the boundary from 2.5m to 2.8m.
- The proposed modest house will not limit the carrying capacity of the R310, nor would it interfere with the safety and free flow of traffic along the R310. The laneway is limited in terms of who uses it.
- A photomontage is submitted, with the proposed planting in place, showing that the modest house would be naturally absorbed into the landscape and would not be visually obtrusive and discordant on the existing landscape when viewed from the R310.
- This proposal would not establish a precedent for further development along this laneway.
- In relation to legal entitlement of the laneway, a declaration/deed of grant of way has been signed by all relevant parties. The right of access also exists in tandem with the right to upgrade, maintain and carry out improvements to the surface and the integrity of the right of way. The modest improvement works proposed would be exempted development. This aspect of the development should not be considered material in the determination of this appeal.
- The applicant's housing need is a genuine rural generated need. The family is involved in the local GAA club and Forogie. Marieta Brogan has just started a full time primary teaching course and submits a letter indicating she will do her practical teaching, starting October 2018, in Currabaggan National

School and hopes to gain a job locally when she graduates. Padraic intends to work part time in Micks Garage in Ballina so that he can develop and run the farm. The applicant also looks after her elderly parents which currently involves daily trips from Ballina.

- Alternative sites were considered within the family holding and this was considered the most appropriate location, given section 6.2 of the development plan whereby it is preferable to locate a dwelling on the footprint of any existing ruin or cluster of ruined buildings. This location will also enable retention of existing hedgerows and walls.
- The replacement of an existing ruin, utilising a long established road, represents sustainable development in the purest form.
- The proposed development will not detract from the residential amenities of any adjoining dwellings nor will it result in the depreciation of adjoining property values.

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

None.

### **6.4. Observations**

None.

### **6.5. Further Responses**

None.

## **7.0 Assessment**

7.1. The primary issues for assessment include:

- Planning History
- Rural Housing Policy
- Access Track/Laneway and Traffic

- Red Line Boundary
- Amenity of the Area
- Wastewater Treatment

### **Planning History**

- 7.2. The location and design of the proposed dwelling is as per the previous application refused by An Bord Pleanála (PL16.249129). In addressing one of the refusal reasons, the applicant has omitted the previous proposal to widen the laneway and remove an existing stone and hedgerow boundary. The proposed access track is now to be upgraded within the confines of the existing boundaries. The applicants have submitted additional documentation with this application and in the grounds of appeal response to address the second reason for the previous refusal.
- 7.3. The applicants have included the following additional documents to support their application: an affidavit, which has been signed by neighbouring landowners, confirming that the applicants can legally use the existing laneway; a signed affidavit from Thomas Ferguson stating his intention to transfer his lands to Marieta Brogan no later than 1<sup>st</sup> May 2019; letters from the primary schools in Knockmore which state the applicants attended there; letters from secondary schools in Ballina stating that each applicant attended there; a letter approving a disability grant for a Val Brogan of Barnfield, Knockmore; a letter from the Foroige and GAA clubs in Knockmore stating Marieta Brogan's daughter attends these groups; letter from Knockmore GAA stating Marieta Brogan and Padraig Crean are active members; and a letter from Micks Garage in Ballina stating Padraig Crean has requested part time working hours to allow him to develop a farm enterprise. The applicants have submitted a plan indicating the dwelling is visible from the R310 for a distance of 30m and a photomontage of the proposal.
- 7.4. The information submitted by way of this application and the response to the grounds of appeal has been fully considered as part of the assessment hereunder.

### **Rural housing policy**

- 7.5. The applicant is proposing a house on the ruins of an existing house. From site inspection, 2 stone walls were observed which appear to have related to the stated house. A small stone shed with galvanised lean-to roof is also present on the site.

The proposed house is to be located in the approximate location of the previous dwelling and extends further east of it.

7.6. The subject site is located within an area defined as a 'Rural Area Under Strong Urban Influence', given its proximity to Ballina, approx. 7km north of the site. In such areas, the applicant is required to satisfy the planning authority that their proposal constitutes a genuine rural generated housing need based on their own roots in or links to a particular rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need:

- 2.3.1.1 Persons who are an intrinsic part of the local rural community due to their having spent substantial periods of their lives, living in the rural area in which they propose to build a home. This category refers to:
  - a. Farmers, their sons and daughters, a favourite niece/nephew (within the meaning of the Capital Acquisitions Tax Consolidation Act 2003) and/or any persons taking over ownership and running of a farm, who wish to build on the family farm holding (a farm holding shall consist of at least 4ha)
  - b. Sons and daughters of non-farming persons who have spent a substantial period of their lives (i.e. at least 5 years) living in the rural area on which they propose to build and wish to build a home near their family place of residence (i.e. within 5km in any direction of family residence)...

7.7. The applicants are Marieta Brogan and her partner Padriac Crean. The owner of the land is Thomas Ferguson who is stated to be Marieta Brogan's uncle, who has given the site to Marieta with the intention that the applicants re-commence the tradition of family farming and it is intended the transfer the wider landholding to Marieta by 1<sup>st</sup> May 2019. It is indicated in the submitted appeal information that the land is not currently in use as a farm.

7.8. The information accompanying the application states Marieta Brogan grew up in the area, 150m from the site and lived with her parents until she was 24. Her parent's and uncle's houses are identified on a map. Padraic Crean grew up in Cloghans, which is stated to be 3 kilometres from the site. Two letters are submitted with the application which state that both applicants attended secondary school in Ballina.

- 7.9. It is stated that the applicants currently reside in Ballina in rented accommodation with their four children.
- 7.10. Marieta Brogan, it is stated, works for Western Care, an organisation caring for adults and children with special needs in the local area. I note their head office is based in Castlebar. Padraic Crean is stated to work for a garage in Ballina, but if permission is granted, he intends to work part time so as to pursue farming of the land and a letter verifying this has been submitted. I note the previous application indicated Padraic Crean worked in an office/data centre in Ballina in a company owned by his brothers.
- 7.11. It is stated that the applicants' roots are established in the area, their children play for Knockmore GAA club and attend the local forroige club. The applicant wishes to live in the local area where she grew up, on land which has been in their family ownership since the eighteenth century, 150m east of the family home. It is stated that the applicant Marieta Brogan looks after her elderly parents, who have health issues, which currently involves daily trips from Ballina (where they live) to Gortaskibbole. The applicants contend that they comply with Section 2.3.1 (a) and (b) of the development plan and have a genuine rural generated housing need.
- 7.12. The appellant contends that the proposal constitutes urban based pressure for a rural dwelling as the applicants both live and work in Ballina. A concern is raised that this decision will result in precedent for further development of dwellings along this laneway.
- 7.13. With regard to section 2.3.1.1(a) of the development plan, the applicants have submitted with the application an affidavit from the landowner (uncle) stating that he will transfer ownership of the farm to Marieta before May 1<sup>st</sup> 2019. I note that it is stated that the land does not currently operate as a farm, with the intention that Padraic Crean will commence a farm if permission is granted. I therefore consider that the applicants do not, in my view, strictly comply with section 2.3.1.1(a) of the development plan. Furthermore, I have strong reservations in relation to the applicants' proposal to build a dwelling on the basis that a farm may be developed thereafter. There is no land specific requirement for the proposed dwelling, indeed this permission for a dwelling in the middle of an agricultural landholding could undermine the potential of this agricultural resource.

7.14. With regard to section 2.3.1.1(b), the applicants appear to comply with this section of the Rural Housing Policy in that they are from the area and the proposed dwelling is within 5km of one applicant's family home. However, the proposed dwelling is approx. 7km south of Ballina, where the applicants are stated to be living in rented accommodation. The proposed dwelling is within a Rural Area Under Strong Urban Influence. Ballina is identified in the development plan as a linked hub with Castlebar and it is a key element of the core strategy and settlement strategy to focus growth into the linked hub and key towns. Ballina has excess zoned land to cater for residential development, as per the development plan, and there is a focus on consolidating its growth. I overall have serious reservations about the need for a rural dwelling at this unserviced location. To build a house for a resident just 7km from Ballina, in which there is provision for residential development and away from a location of employment, would in my opinion exacerbate development in a rural area under strong urban influence, would lead to increased trip generation and private car usage (notwithstanding the applicants statement that they visit the area regularly), and increased demands for the provision of further public services and community facilities where none are proposed. The proposal would by itself and by the precedence it would set, in strategic terms, undermine the current development plan objectives for the consolidation of the town of Ballina, as per policy P-01 of the Mayo County Development Plan. Furthermore, I do not consider that the applicants demonstrate a rural generated housing need, having regard to the other development plan policies which seek to regulate rural housing and consolidate development in line with its settlement hierarchy. The proposed development would be contrary to the provision of the development plan in respect of its settlement strategy and would accordingly be contrary to the proper planning and sustainable development of the area.

### **Amenity of the Area**

7.15. The applicant, in addressing one of the previous reasons for refusal on this site, argues that the proposed dwelling is on the site of a previous dwelling and states that should permission be granted the farm will be completely re-established and operational thereafter. The applicant no longer proposes to remove the laneway boundary, but rather to tidy the laneway between the boundaries, which has a width

of 2.8m. The proposed dwelling would be screened from the R310 by existing and proposed landscaping, as demonstrated in the submitted photomontage.

7.16. The appellant considers the proposed dwelling will detract from the rural area and the details supplied in relation to works to the boundary are insufficient.

7.17. There are a number of one-off rural properties in this immediate area, which are primarily located in a ribbon pattern along the R310. The applicant's dwelling is proposed to be located in the middle of agricultural land, approx. 200m from the road. I note the Mayo County Development Plan 2014-2020 states that to avoid ribbon development a sequential approach to choosing a rural housing site should be included, one of the preferred options being to locate on the footprint of any existing ruin or cluster of ruined buildings, subject to normal planning considerations. I accept the revisions to the access track are an improvement on the previous application in that the existing boundaries would be retained and this is positive in terms of habitat retention. It remains the case, however, as noted in the previous ABP report on this site, that what remains of the ruined buildings/cluster have been largely subsumed within the surrounding agricultural nature of the land and to establish a rural dwelling at this location would be visually obtrusive and discordant on the existing landscape and could affect negatively this agricultural resource.

### **Other Matters**

#### **Red Line Boundary and Traffic**

7.18. The applicant has submitted a declaration/deed of grant of way signed by the adjoining landowners indicating the applicants have a right of access along the laneway. The application is accompanied by two letters of consent from the owners of the 2 existing dwellings on the laneway, which adjoin the access to the R310. The letters consent to the applicant upgrading the access from the R310 and removing/relocating trees.

7.19. Works to the access from the R310 are required by the local authority. The national roads design office has no objection to the proposal.

7.20. I note that traffic hazard did not form a basis for the previous refusal of permission by the Board on this site and the minor increase of traffic at this location is accepted as not being significant.



## **Wastewater Treatment**

- 7.21. The applicant proposes a septic tank and percolation area. The accompanying site suitability assessment indicates the site is over a Regionally Important Karstified Aquifer (Rk), with vulnerability classified as High. The EPA Code of Practice (CoP) indicates that the site falls within the R2(1) response category where an on-site system is acceptable subject to minimum thickness of 2m unsaturated soil/subsoil beneath the invert of the percolation trench of a septic tank system.
- 7.22. The trial hole results report a depth of 2.8m unsaturated soil. The T-test was undertaken, in accordance with the CoP Annex C. A trial hole depth of 2.8m is indicated on the form, however it is also indicated that a depth of 3m is required for regionally important aquifers. The T value is stated to be 7.5. T values between 3 and 50 indicate soil is suitable for the development of a septic tank system or secondary treatment system discharging to the groundwater. The proposal complies with separation distances to key features and scale of percolation area required.
- 7.23. Based on the information before me, I am satisfied that the proposal if permitted would not be prejudicial to public health with regard to the septic tank and pumping system.

## **Appropriate Assessment**

- 7.24. Lough Moy SAC is located approx. 2km east of the site. Lough Conn and Lough Cullin SPA is located approx. 3km west of the site.
- 7.25. Having regard to the nature of the development for one dwelling and the separation distance to any European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1. It is recommended that permission for the proposed development be refused for the reasons and considerations set out hereunder.

## 9.0 Reasons and Considerations

Having regard to the location of the site within an "Area Under Strong Urban Influence" as identified in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the Mayo County Development Plan 2014-2020, it is considered that the applicant has not adequately satisfied the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house and, given its location within the centre of an agriculturally landholding, would contribute to the encroachment of random rural development in the area, would form a discordant and obtrusive feature on the landscape and would militate against the preservation of the rural environment, and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Una O'Neill  
Senior Planning Inspector

5<sup>th</sup> December 2018