



An
Bord
Pleanála

Inspector's Report ABP 302949-18

Development	Change of use from a house to a public house, erection of a rear single-storey extension, alterations to the front elevation and barge style roof detail, connection to wastewater treatment system and associated works.
Location	Ballyliffin, Lifford PO, Co Donegal.
Planning Authority	Donegal Co. Council.
Planning Authority Reg. Ref.	18/51065
Applicant(s)	Glashedy Investments Ltd.
Type of Application	Permission.
Planning Authority Decision	To Grant Permission.
Type of Appeal	Third Party
Appellant(s)	Breid Doherty & Others Brian Grant.
Observer(s)	None.
Date of Site Inspection	February 20 th , 2019.
Inspector	Breda Gannon.

1.0 Site Location and Description

1.1. The site is located on Shore Road, Ballyliffen, Co Donegal. It includes a small rectangular area to the front and a more elevated irregular shaped area to the rear. The area to the front accommodates a single-storey vacant dwelling with enclosed garden space to the front and the rear. The house which is set back from the roadside has a pitched roof, two bay windows to the front and a small extension to the rear. It is adjoined to the north by a two-storey dwelling, which has a single-storey dwelling flanking its northern gable, and associated outbuildings to the rear. To the south there are two parallel roadways, one providing access to a large dwelling house located on elevated ground to the rear and the other providing access to Ballyliffen Lodge Hotel. The remainder of the site comprises part of the garden of the adjoining house to the rear. There are numerous residential properties in the vicinity and the Strand Hotel lies directly opposite the site on the other side of the road.

2.0 Proposed Development

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

- Permission for the change of use from a domestic dwelling to a public house.
- Rear single-storey extension
- Alterations to the front elevation and barge style roof details, and
- Connection to wastewater treatment system and all associated works.

The application is supported by the following documents:

- Site Suitability Assessment Report
- Screening for Appropriate Assessment
- Acoustic Report.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the development, subject to 10 no. conditions. Apart from standard construction/engineering type conditions, the decision includes the following conditions of note:

Condition No 1 (b) -Temporary permission for an on-site wastewater treatment system to serve the development until such time as the municipal facilities have been augmented. The development shall be connected to the public system when augmented and the on-site treatment system shall be decommissioned and removed from the site.

Condition No 2 – Public house opening hours.

Condition No 3 – Controls advertising within the site.

Condition No 4 – Signage to be in the Irish language/bilingual requirements.

Condition No 9 - Wastewater treatment system.

Condition No 10 – Development contribution.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **Planning Officer's** report of 8/10/18 considers that the proposal is acceptable in principle within the settlement envelop of Ballyliffen. An on-site wastewater treatment system is proposed to overcome the original reason for refusal. The activity and level of impact on residential amenity that may be generated by the use is consistent with what might reasonably be expected in a village centre. The proposal would be limited in terms of additional traffic and parking generation. The proposal generates a requirement for 4 no. parking spaces, which is available in the immediate vicinity. The content of the acoustic report is noted and due to the limited scale of the development it is not considered that issues arise.

3.2.2. Other Technical Reports

The **E.E Road's** report of 13/8/18 draws attention to previous conditions.

The **Road Design** report of 3/8/18 notes that the drawings do not accurately display visibility splays. It also notes that car parking spaces as required under the development plan and loading/unloading areas to cater for the proposal are not shown. It is recommended that these matters be conditioned.

The **Chief Fire Officer's** report of 19/7/18 raises no objection to the development subject to conditions.

3.3. Prescribed Bodies

- 3.3.1. The Environmental Health Service report of 27/7/18 notes the proposal to locate the wastewater treatment system/polishing filter at a distance uphill. Provided the separation distances can be achieved between the system and the inhabited parts of the adjacent dwellings, it may be possible to locate a gravity fed polishing filter downhill from the wastewater treatment system. No objection is raised to the proposal subject to conditions.

3.4. Third Party Observations

- 3.4.1. Observations were received from 2 no. parties which raised similar issues to those raised in the appeals.

4.0 Planning History

1. **Reg Ref No. 16/51668** – Permission granted for the change of use of existing dwelling to a public house. The decision was overturned by An Bord Pleanala (PL 05E.247996) for one reason relating to the deficiency in the sewerage system in the village.
2. **Reg Ref No 17/51985** – Planning permission refused for the change of use of house to public house with connection to holding tank in lieu of wastewater treatment system on the grounds that the planning authority was not satisfied that the holding tank arrangement could be effectively managed without risk

of odour or nuisance to third party property and the potential for adverse impacts on the SAC located within 0.73km of the site.

5.0 Policy & Context

5.1. Development Plan

5.1.1. The operative development plan is the **Donegal County Development Plan 2018-2024**. The site is located within the settlement envelop of Ballyliffen (Map 15.12 refers).

5.1.2. Relevant policies to the consideration of the application include:

Policy WES-P-11 – It is the policy of the Council to support and facilitate Irish Water to ensure that waste water generated is collected and discharged in a safe and sustainable manner that is consistent with the combined approach outlined in the latest Waste Water Discharge (Authorisation) Regulations and with the objectives of the relevant River Basin Management Plan. It sets out the requirements for various forms of development in sewered/ unsewered areas. The full text of Policy WES-P-11 is appended to the back of the report for the information of the Board.

Carparking standards are set out in Table 6 of Appendix 3 of the development plan.

6.0 The Appeal

6.1. Grounds of Appeal

1. Breid Doherty & Others

The following summarises the grounds of appeal:

- The layout plan is inaccurate and is not an accurate indication of the situation on the ground.
- Inaccurate description of the development as a wastewater treatment system is not expressly applied for.

- The site is incorrectly presented and the configuration of the site does not allow for the installation of an on-site effluent treatment system due to the size of the site and inadequate separation distances.
- The premises is unsuitable for use as public house and will directly impact on the residential amenity of the adjoining property which is located just 4m from the application site.
- The application is premature pending the provision of a new public sewage plant for the town.
- The loadings used in the site assessment are based on a PE of 16 which is an underestimate of the actual customers that will use the premises. Condition No 9 (f) requires a 120m² soil polishing filter which cannot be accommodated on the site.
- The proposal is contrary to Policy WES-P-11 as it is not proven that the effluent will be safely discharged. The site is inadequate to accommodate the proposed development and meet the set back distance requirements. The policy states that 'where the provision of capacity is not imminent', as in the case of Ballyliffen, development will in general not be permitted.
- There is no consent for vision lines over third party properties. Under the CPD Technical Guidance Section 2 Part B Appendix 3 within 60km/h speed zones stopping distances of 59m would be required.
- Staff parking is inadequate and no disabled parking bays or loading bays are shown. The photographs show extreme congestion in the village with no available car parking during weddings at local hotels. Planning permission granted for a takeaway in the centre of Ballyliffen required that 10. No parking spaces be provided. No parking contribution is required under the permission in lieu of on-site parking provision.
- There have been two refusals of planning permission (03/4700 & 10/70353) for a public house development in Main Street, Ballyliffen on the grounds of impacts on residential amenity, traffic safety and public health. Similar reasoning should be applied to the proposed development.

The appeal is supported by a number of attachments.

2. Brian Grant

The grounds of appeal are similar to those raised in the appeal by Breid Dohery & others. Additional issues raised are summarised as follows:

- Lack of information on drawings submitted, no sectional drawings from the front to the rear of the site, no contiguous streetscape elevations.
- A large free-standing sign has been erected in the front garden, no planning application has been made for it and it is not described in the current planning application.
- The boundary treatment with appellant's property are not clearly shown. Hedgerow removal would result in a loss of biodiversity. The rear boundary bin storage area is very close to the appellant's home and garden.
- The proposed public house will have the propensity to generate significant noise. The applicants have submitted an acoustic report but no noise proofing measures are proposed for the building. As noted in the previous ABP report, planning conditions could have been included to prohibit amplified music on the premises. The front door of the premises is to be used as an emergency access only and this could be attached as a condition to prevent congregation and noise beside appellant's front garden.
- Inaccuracies in the site assessment report. No site-specific site section. Photographs are poor quality and inadequate to demonstrate depth to bedrock. The indicated depth to bedrock would appear to be deeper than exists on adjoining sites. The location of trial hole/tests holes is not indicated. It is unclear if the separation distances have been verified on the ground. The site assessment proposal is to discharge to surface water but there is no watercourse nearby. The site plan does not show the outdoor seating area of the hotel that is proximate to the proposed effluent treatment system. The Board cannot accept the site assessment report as presented and make an informed decision of the proposed effluent treatment system.

- Concerns that the system is upslope of appellants house and there could be potential leakage from the system that relies on a pump. This would be exacerbated during periods of heavy rainfall. No surface water interceptors or other mitigation is shown to alleviate this.
- The effluent treatment system could sterilise any domestic building/extensions on appellant's property due to the necessity to comply with set back distances from filter beds. This could be an unacceptable restriction on appellant's property.
- It is unclear if there is a separate surface water drainage system for the village or if surface water would enter the public sewerage system which is overloaded.
- The proposal contravenes Policy ED-P-14 as it would impact on the residential amenity of appellant's property.
- There is no capacity on the site for adequate and accessible parking associated with the proposed commercial use. The rear access is too narrow to function as a vehicular access and the yard area would have inadequate manoeuvring or turning areas.
- There are numerous precedents across the country where planning permission has been refused by An Bord Pleanála for public houses (Table 1) and smoking areas (Table 2) due to the detrimental impacts they would have on residential amenity.
- The development contribution would appear very low.
- It is not possible to comply with Conditions 1a, 2 and 9 within the wrongly configured site. Condition No 1a will result in the siting of a large filter bed on top of the existing private access drive. Condition No 2 relating to opening hours unlikely to be complied with.

The appeal is supported by a number of attachments.

6.2. Applicant Response

- 6.2.1. The grounds of appeal include a number of issues which were raised during the previous appeal. The Board refused permission for one reason only relating to the deficiency of the Ballyliffen wastewater treatment system. Whilst other issues were raised in the appeal and were assessed by An Bord Pleanala, it found that there was no basis for including them as reasons for refusal.
- 6.2.2. The current proposal is similar to the previous appeal case, with the addition of a wastewater treatment system, which is included in order to address the previous reason for refusal. It is reasonable to conclude that the substantive and only issue to be addressed now relates to the proposal for a temporary wastewater treatment system to serve the premises, pending the augmentation of the Ballyliffen treatment works.
- 6.2.3. Paragraph 7.14 of the Development Management Guidelines (June 2007) states that all substantial reasons should be stated so that prospective applicants are aware of any fundamental objections to their proposal. While it is open to appellants to include grounds of appeal, previously dismissed by the Board, it is considered that they should not be re-assessed as the Board did not consider them to be a fundamental reason for refusal in its previous decision (PL 05E.247996). On the basis of the Development Management Guidelines, only the following grounds of appeal are responded to, as the others were already assessed and not included as fundamental reasons for refusal by An Bord Pleanala.
- 6.2.4. Inaccurate layout and location drawings
- It is stated that the driveway serving the applicant's home to the west is inaccurately shown on the plans and that the wastewater treatment system cannot be accommodated due to limited separation distances.
 - The driveway was removed from the development site, outlined in red on the plans submitted. This was to maximise the extent of ground available for the wastewater treatment system.
 - The diverted driveway is located in a revised location further south on applicant's lands and outside the appeal site. It will be the subject of a separate application for permission if the Board issues a favourable decision

on the current proposal. The separation distances between the wastewater treatment plant and the sand based polishing filter within the development site and the proposed diverted driveway, as shown on the applicant's plans are accurate and comply with EPA standards.

- For clarity, the location of the existing driveway is shown hatched on Dwg 2201 Site Layout 11 in Appendix A. Whilst a section through the site is not a requirement under article 23, the applicant has attached a site section to Dwg 2201 Site Layout 11 in Appendix A.

6.2.5. Development description

- The description of the development was accepted and validated by the planning authority. It is reasonable to conclude from the wording of the public notices that a wastewater treatment system is proposed.
- The appellants' grounds of appeal in relation to the public notices, does not reflect the common sense approach advocated in the Development Management Guidelines (para. 3.4).

6.2.6. Effluent disposal uncertainties

- The current application is an attempt to address the single reason for refusal by An Bord Pleanála. Having regard to the imminent augmentation of the sewerage system by Irish Water, it is reasonable in the interim that the applicant explore the possibility of proceeding with the development on the basis of a temporary wastewater treatment system.
- The Inspector in the previous appeal, who did not consider the provision of an on-site treatment to be a feasible solution to the sewer deficiencies, was not aware of the extent of adjoining lands owned by the applicant. The policy alluded to by the Inspector has been adopted in the new development plan under Policy WES-P-11, which confirms that the Council will support and facilitate Irish Water to ensure that waste water generated is collected and discharged in a safe and sustainable manner.
- The appellants are incorrect in stating that the proposal is premature as the planning authority has adopted policies to facilitate development in advance of augmentation.

- The augmentation of the Ballyliffen WWTS is included in the Irish Water Investment Plan 2017-2021. The proposal will not result in the discharge of treated effluent to the public mains. No surface water will be discharged to the public mains as any additional run-off will be directed to a soakaway on the site (Dwg No 2201 Site layout 11 in Appendix A).
- Appendix B contains a comprehensive and detailed report on applicant's proposal for a temporary wastewater treatment system. The report confirms that the site has sufficient area and capacity to satisfactorily and safely treat the anticipated effluent generated by the proposed development to an estimated PE of 16, which equates to 71 people using the premises daily. Furthermore, the report confirms that the site can adequately cater for a substantially increased PE loading over the estimated usage of the premises should the Board consider that the PE 16 is an underestimation. The report demonstrates that estimated loadings for a daily usage of 159 people can be readily accommodated on the site.
- The report also addresses the imposition by the EHO of a 120m² soil filter instead of the recommended sand filter and sets out the advantages of the sand filter.
- It is acknowledged in the layout plan 2201 Site Layout 6, submitted with the application that surface water from the building would discharge to the sewer. This is accurate insofar as the surface water from the existing building would discharge to the sewer with no increased loading. The surface water from the proposed extension would discharge to a soakaway to be provided on the site. This is shown on attached drawing Site Layout Plan 11.
- The content of other queries on the site assessment test are noted. The applicant does not wish to comment further on the matters raised which include a typo error on the depth to bedrock, doubts on the registered depth of the bedrock, the definition of abbreviations and an 'understanding' with EHO officials regarding the extent of sand filter areas for PE levels, which are specifically set out by the EPA.
- The applicant has demonstrated that the proposal to address the single reason for refusal of the earlier application, through the introduction of a

temporary wastewater treatment system is feasible. No additional loadings of foul or surface water will occur as a result of the proposed development. The temporary system will be decommissioned and removed from the lands when the treatment plant for the village is augmented by Irish Water.

6.3. Planning Authority Response

- No reference was made to inaccuracies/misleading information in the submissions and the planning authority determined the application on the basis that the information was accurate and correct.
- The current proposal is materially different from previous proposals in that an on-site wastewater treatment system is proposed. The planning authority is satisfied that the description of the development made sufficient reference to the on-site system and the plans and details submitted with the application clearly identified this arrangement.
- The proposed development was determined to be acceptable in principle insofar as the site is located within the village and would make a positive contribution to this settlement, which has limited social and community infrastructure.
- The activity and potential impact that might be generated by such a use is consistent with what could reasonably be expected in a village centre and is therefore considered acceptable in planning terms.
- The development is considered under the provisions of Policy WES-P-11 which facilitated consideration of connection to individual wastewater treatment systems on a temporary basis until the municipal system is augmented. A positive report has been received from the EHO in respect to the arrangement.
- The planning authority is satisfied that the proposal accords with the criteria applicable to economic development under Policy ED-P-14.
- The proposal is for a small public house that will give rise to limited traffic movements and parking needs, which can reasonably be met by the availability of public car park and on-street parking. It will not result in any

significant intensification of the use of the existing entrance and accordingly there is no requirement to provide vision lines.

- The previous refusals for public houses in the village are noted. This application is assessed on its own merits.
- Development contributions have been imposed in accordance with the current scheme.

6.4. Appellants' submission on First Party response to grounds of appeal

6.4.1. Appellants' right to point out serious irregularities in the planning application

- Appellants' are aggrieved at the apparent dismissal of the irregularities and misinterpretations by the applicant's rebuttal. The absence of a proper site survey and errors in the site assessment are fundamental matters to the application.

6.4.2. Improper planning and development

- The proposal is to make a second application to relocate the proposed driveway (that is within the site and not shown on the application drawings) if the Board grant planning permission. To have a second stage planning application to be lodged in the future to allow the misrepresented proposed development to be implemented is 'improper planning'. Implementation of the proposal will eliminate a private access drive to this house. The applicant is a company whilst the access drive is assumed to belong to a private household. A planning condition cannot be attached for such a doubtful scenario.
- The omitted and misrepresented access drive which is not shown on the site layout and is ignored for the sewerage system is a fundamental misinterpretation and is a mandatory requirement (*State Elm Developments Ltd v An Bord Pleanala 1981 I.L.R.M 108; Seery v An Bord Pleanala, unreported High Court, Finngan J June 2, 2000*).

- While the planning authority did not invalidate the application, the Board would be obliged to do so.

6.4.3. Wastewater treatment report

- There are several issues with the revised Site Suitability Assessment Report (November 2018). It states that the EHO's condition of 120 m² soil filter is to be disregarded as the site cannot accommodate this size of filter. The system is on and adjoins a road and cannot meet minimum set back distances. The photographs are not readily recognisable as being taken on this site. The test hole locations are not shown, appellants private well is not identified or assessed and there is no site specific site section for the pumping station or soakaway.
- It has not been demonstrated that the size of the filter required could be accommodated on the site and minimum separation distances complied with.
- Test holes (photographs attached) excavated on adjoining site and within 5m of appeal site boundary indicated rock close to ground surface. The appellants assessment has not had due regard to the presence of shallow rock and whether the site can absorb the hydraulic load.
- There is a private well on appellants' property close to the appeal site boundary. It is intended to use this well as the main source of water for the house if water charges are introduced. The well is downslope of the wastewater treatment system.
- No details are provided of the soakaway, which is upslope of appellants' property.
- The site is not suitable for an on-site disposal system and should be refused.

6.4.4. Survey and layout plan

- The layout plan does not show car parking that exists at the front of the hotel. The proposed new access appears to encroach onto the wedding garden area. If the wedding garden area is unauthorised this may have implications for the procedural processing and validity of an application for a relocated driveway.
- No permission exists for the blue coloured arch sign over the access entrance to the hotel (Photo 2).

7.0 Assessment

7.1. Introduction

7.1.1. The main issues that arise for determination by the Board in respect to this appeal relates to the following;

- Principle of the development.
- Site drainage.
- Roads and parking.
- Impacts on residential amenity
- Other matters
- Appropriate Assessment

7.2. Principle of the development

7.2.1. The development is located within the town of Ballyliffen. Under the core strategy it is identified as a Layer 2B - Strategic Town performing 'Special Economic Function' arising from its tourism function and its location on the Wild Atlantic Way. The plan recognises the importance of rural towns and villages in supporting the wider rural community. The proposal is for a small public house in the centre of the town and within the settlement envelop (Map 15.12). I consider that the proposal which will add to the existing facilities available and support the tourism function of the town is acceptable in principle in this location. I note that the Board in its previous decision raised no objection in this regard.

7.3. Site drainage

- 7.3.1. The previous proposal included a connection to the existing sewer and was refused by the Board due to deficiencies in the sewage treatment plant. The existing wastewater treatment plant, which has a PE of 400 is overloaded and inadequate to cater for the urban area PE of 1303 (Table 2A.4 of the development plan). Connecting to the existing sewerage system is not therefore an option until the plant is upgraded. I note that the Ballyliffen Scheme is identified in Irish Water Capital Investment plan 2017-2021 (Table 2A.7). I also note that a feasibility study for the upgrade of the wastewater treatment plant was due to commence in 2017 (Table 2A.4). It is unclear if details of the application were referred to Irish Water and there is no information on current progress with regard to the augmentation of the scheme. Should the Board be minded to grant permission they may consider inviting Irish Water to comment in relation to timelines regarding the delivery of improvements to the waste water treatment plant.
- 7.3.2. The applicant proposes an on-site wastewater treatment system as an interim solution until the treatment plant is upgraded. The treatment system would be located upslope to the rear of the site and on lands within applicant's ownership. The lands form part of the curtilage of an existing house.
- 7.3.3. A site suitability assessment was submitted in support of the application. It indicates that the site is underlain by a 'Poor' aquifer of 'Extreme' vulnerability. The trial hole is stated to have excavated to a level of 1.67m and bedrock was encountered. The water table was not reached. The T test (10.94) and P test (5.58) results indicate soils with rapid percolating properties consistent with the soils/subsoils present on the site. The conclusion reached is that the site is suitable for on-site treatment of effluent.
- 7.3.4. The applicant proposes to install a packaged waste water treatment plant (mechanical aeration system). The entire system would be located on ground that is significantly above the finished floor level of the public house. The effluent arising will be discharged to duplicate macerating pumps before being pumped to the wastewater treatment system and finally to a polishing filter, prior to discharge to ground. I note that it is recommended in the site suitability assessment that existing soils and subsoils be excavated to a depth of 1.67m and replaced with suitable

imported material with a T-value of 20-30. A sand polishing filter is recommended as there is insufficient space on the site to accommodate a standard soil percolation area.

- 7.3.5. The Environmental Health Officer raised no objection to the proposal subject to the system being suitable for a PE of 16 and that a soil polishing filter of 120m² be provided with suitable material imported onto the site to create a T value of 3-20 and that drains be constructed around the soil polishing filter to prevent the ingress of surface water.
- 7.3.6. It is accepted in the First Party rebuttal to the grounds of appeal that a soil polishing filter of 120m² as required by the EHO cannot physically be accommodated on the site. Appendix B of applicant's response also states that the sand filter was chosen as it requires less space, achieve greater separation distance, reduced visual impact and there is the option to provide a prefabricated certified unit on the site with certified sands and gravels. In contrast soil polishing filters require a larger area making separation distances more difficult to achieve. There is also increased visual impact where they contain a mound and there are intricacies associated with construction and compliance issues.
- 7.3.7. It is contended in the grounds of appeal that the number of patrons that will use the premises daily is underestimated (71) and that the treatment system which is designed for a PE capacity of 16 would be inadequate. Referring back to Appendix B of the First Party rebuttal, the Board will note that a PE of 16 requires a sand polishing filter of 18.5m². The report notes that the site could accommodate a polishing filter of up to 35m² while still complying with the required separation distances, and an increase of patrons of up to 159 per day.
- 7.3.8. Addressing the Third Part's assertion that the proposal is premature pending the upgrade of the sewage treatment system, the First Party draws on the provisions of Policy WES-P-11 of the development plan. It sets out waste water treatment requirements in sewer/unsewered areas for three categories of development as follows;
- 1 single dwellings (or equivalent) with a PE of 10 or less in sewer areas
 - 2 single dwellings (or equivalent) with a PE of 10 or less in unsewered areas,
- and,

- 3 multiple developments (or equivalent) where there is inadequate existing capacity within a waste water treatment plant to accommodate new development. Its sets out 2 no. scenarios depending on the provision of capacity is imminent (a) or not imminent (b).

7.3.9. The applicant's rely on part (a) on the basis that the provision of capacity is imminent. It reads as follows:

(a) Where the provision of capacity is imminent and:

- (i) There is an existing sewer with adequate hydraulic capacity, approval may be granted for an interim treatment plant that shall discharge treated effluent to the sewer. Immediately following the provision of the necessary treatment capacity the interim plant shall be decommissioned and the wastewater directed to the sewer The conditions listed under (A) in Table 5.2.1 below shall apply.
- (ii) There is no existing sewer, interim approval may be granted for a treatment plant where a licence to discharge the treated effluent to the receiving environment is obtained. The conditions listed under (A) in Table 5.2.1 below will also apply.

7.3.10. I do not consider that the proposed development falls within any of these categories of development. The proposal, not being for a dwelling house, does not come within the scope of category 1 or 2. Under category 3 it is clearly anticipated that where effluent is being treated on site it should be discharged to a sewer where one is available with adequate capacity. While there is a sewer available there is no available capacity in the system and this formed the Board's reason for refusal on the previous application. The alternative is to discharge the effluent under licence to the receiving environment, which is not proposed.

The Senior Planner (memo on file) states that the application of the provisions of Policy WES-P-11 is not appropriate in this case. It is stated to be directed at multiple housing development, where difficulties regarding maintenance, enforcement of conditions etc, associated with treatment plants are likely to arise and does not refer to commercial/enterprise situations. The Planning Officer notes that in this case there will be a single entity responsible for the treatment plant and having considered the EHO report permission could be granted for the proposal. The Planning

Authority's response to the grounds of appeal considers that the application of Policy WES-P-11 is appropriate on the basis that it facilitates individual wastewater treatment systems on a temporary basis until such time as the municipal scheme is upgraded.

- 7.3.11. Issues have been raised in the appeal regarding the adequacy of the site to accommodate the proposed on site treatment system and achieve the required separation distance in accordance with the EPA Code of Practice. The layout plan shows that adequate separation distances can be achieved between the treatment system/polishing filter and adjoining dwellings, site boundaries and roads. The appellant's stated that there is a well located adjacent to the common boundary, the location of which is shown the appellant's response documents. The recommended distances between a downgradient domestic well and percolation area/polishing filter is set out in Table B.3 of Appendix B of the EPA document. It appears that based on the recorded T-value of 10.94 and a P value of 5.58, that at least 45m and perhaps 60m separation distance should be provided to protect the well. I accept that this can be achieved on the site for both the proposed development and for a scenario where an increased size polishing filter of 35m² is deemed necessary.
- 7.3.12. The appellant takes issue with the accuracy of the site suitability assessment, stating that bedrock was encountered closer to ground level on the adjoining site. Details of 4 no. test holes, stated to have been excavated by hand are included in the response documents which states that rock was encountered at depths varying between 457mm and 711mm. I accept that conditions can vary between sites and even at different locations within the same site. I not in a position to comment further on this matter.
- 7.3.13. Whilst it appears that the required separation distances can be achieved on the site, I have serious concerns regarding the efficacy of the proposed treatment system. It involves a complicated system located upslope of the proposed development and requires multiple pumping systems to convey effluent from the public house to the polishing filter, with over 70m of piping required. The pipes will be installed in a slope where levels rise significantly from the finished floor area of the public house (38.4) to the treatment system inlet pipe (44.23) and the polishing filter (47.89).

- 7.3.14. The level of intervention required on the site to install the wastewater treatment system is significant and there is no guarantee that the proposal will be successful. In the event that the system is not installed properly, is not properly maintained or there is a failure in the pumping system, effluent would not be discharged to the treatment system which would create a risk of environmental pollution and would be prejudicial to public health.
- 7.3.15. I am not persuaded that permitting such a system is the optimal solution for the development of the site. The complexities of the site and the proposed system creates a significant risk of failure. I also have concerns that, if permitted, the proposed development would create a precedent for similar type development, with individual developments served by private treatment plants, in the event of further delays in the upgrade of the waste water treatment plant. I do not consider that the previous reason for refusal have been addressed and I recommend that permission for the development be refused on that basis.

7.4. Roads & Parking

- 7.4.1. Issues have been raised in the submissions regarding the lack of on-site carparking and adequate sight visibility splays at the site entrance. The proposal is to provide 2 no. spaces to the rear of the site. The development generates a car parking requirement of 4 no. spaces under the provisions of the development plan (1 no. space per 20m² of publicly accessible floor area -Table 6 of Appendix 3). The restricted nature of the site limits the potential to provide additional parking space and it is questionable how the 2 no. spaces to the rear would function effectively.
- 7.4.2. While I accept that I inspected the site outside the tourist season when the demand for parking is likely to be significant, having regard to the limited scale of the development, its location within the town and the availability of parking, both on the roadside and on the opposite side of the road adjacent to the Strand Hotel, I do not consider that the lack of on-site car parking is likely to be so significant issue, to warrant refusal of permission.
- 7.4.3. The site is enclosed by a stone wall with vehicular access located on the southern end of the site frontage. The provision of increased sight lines would require the removal of the roadside boundary wall, with impacts on the visual amenities of the area. Having regard to the limited traffic that would be generated by the proposed

development and its location within the town where vehicles are not travelling at high speed, I do not consider that there is a necessity to provide increased visibility displays. Any loading/unloading operations can take place from the kerbside, consistent with normal practice in town centre locations.

7.5. Impacts on residential amenity

- 7.5.1. The appeal site is adjoined to the north by a two-storey residence and there are many other residential properties close by. Having regard to the proximity of the Strand Hotel and public car park immediately opposite the site and the Ballyliffen Lodge & Spa to the southwest, it is likely that there is already a degree of impact on the amenity of these residential properties. Both these premises hold weddings and other events which together with generated traffic would impact on the residential amenity of these dwellings.
- 7.5.2. The appellant's have concerns regarding noise from music and the smoking area. An Acoustic Report supports the application. It considers the existing noise environment and potential noise levels arising from the development. A noise survey was conducted in March 2017 at a time when there were weddings in both hotels. The results were stated to be typical of a small town environment under similar conditions. It is assumed in the report that due to the limited size of the public house, there will be no music, other than perhaps a Hi-Fi system. With regard to the smoking area, potential noise will be buffered by the building itself. The potential for increased noise and disturbance to the adjoining property would arise if patrons were in a position to move around the back of the premises outside the smoking area. I consider that this matter, together with any potential issues regarding amplified music can be addressed by conditions, should the Board be minded to grant permission for the development.
- 7.5.3. Similar issues were raised in the previous appeal and I note that the Board did not consider this to be a reason for refusal. Having regard to the limited scale of the proposed development and its location within the town, where night-time activity is to be expected, subject to conditions prohibiting amplified music and measures to prevent patrons from accessing the rear of the public house, I consider that the development could be accommodated without causing significant adverse impacts on adjacent residential properties.

7.6. Other Matters

- 7.6.1. It is contended that the financial contribution imposed by Condition No 10 is inadequate. The planning authority have levied a contribution of €413.40, calculated on the basis of a floor area of 98.2m² x €4.21 per m². I can find no reference to a charge of €4.21 in Table 1 which provides for a charge of €4.14 per m² for commercial development in areas outside Letterkenny. This would result in a contribution of €406.54.
- 7.6.2. Under the provisions of the Scheme there is specific reference to change of use with the amount levied to be charged at the balance between the normal charges that would be imposed for the development's proposed use (€ 406.54) and normal charges that would be imposed for its current use (€1500). This would suggest that a financial contribution of €1093.46 may be payable.
- 7.6.3. The planning authority has not imposed a contribution in respect to the deficiency in on-site carparking, which would normally attract a development charge of €2500 per space under the provisions of the scheme. Whilst it is unclear, this may be explained by the provisions of Table 3 of the scheme which makes provision for exemptions in town/village centres. A change of use to commercial provides for an exemption from the need to pay a financial contribution for the first 4 no. car parking spaces.
- 7.6.4. Extracts from the contribution scheme are appended to the back of the report for the information of the Board.

8.0 Appropriate Assessment

- 8.1.1. A Stage 1 Appropriate Assessment Screening Report was submitted in support of the application. It identifies 8 no. Natura 200 sites within 15km of the site. The sites range in distance from 668m to 14.37km. The closest site is North Inishowen Coast SAC (Site Code 002012), centred on the coastline to the north of the site. It is designated for a number of coastal habitats and for Narrow mouthed Whorl Snail and Otter.

The proposal which involves the change of use from a house to a public bar and the installation of a sewage treatment system within the urban area of Ballyliffen will have no direct impact on the SAC, or any of the features for which the site is

selected. The only potential for indirect impacts that could arise would be from the treatment plant and the migration of water borne pollutants. As noted in the report there are no surface water features close to the site to create a hydrological pathway. Effluent will be subject to tertiary treatment prior to discharge to ground which would reduce the potential for significant concentrations of pollutant to enter ground water.

- 8.1.2. Having regard to the location of the development, the nature of the development and the separation distance from Natura 2000 sites and their features of interest, I consider that the proposed development either alone, or, in combination with other plans or projects, would not be likely to have significant effects on a European site, in view of the sites' conservation objectives and that, therefore, a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement is not required.

9.0 Conclusion

- 9.1.1. The principle of the development, comprising the change of use of a dwelling house into a public house is acceptable in this town centre location.
- 9.1.2. Whilst I accept that there may be capacity issues regarding car parking during the tourist season and during events, having regard to the limited scale of the development and its location within the centre of the settlement with public and kerbside parking close by, I do not consider that this to be a reason to refuse permission for the development.
- 9.1.3. The development will generate limited traffic movements and accordingly I consider that the provision of increased visibility splays is not warranted and would result in the removal of the existing roadside boundary wall which would detract from the visual amenities of the area.
- 9.1.4. The potential impacts on residential amenity that could arise associated with noise from amplified music and the use of the smoking area can be effectively addressed by conditions.
- 9.1.5. Having regard to the site conditions and the proposed arrangements for wastewater treatment which requires multiple pumping systems to discharge effluent to the treatment system and polishing filter, it is considered that the proposed development

would pose a risk of environmental pollution and would be prejudicial to public health.

10.0 Recommendation

10.1. Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be refused for the development for the reasons and considerations set out below.

11.0 Reasons and Considerations

1. Having regard to the site conditions, and to the proposed arrangements for wastewater disposal including the requirement for multiple pumping systems to pump wastewater to a treatment system and polishing filter which is at a significantly higher level than the proposed development, it is considered that the complexities of the site and the proposed system create a risk of failure which would result in effluent not being discharged to the wastewater treatment, which would pose an unacceptable risk of environmental pollution and be prejudicial to public health. Furthermore, it is considered that the proposed development would set an undesirable precedent for similar private development served by individual wastewater treatment systems which would be contrary to the proper planning and sustainable development of the area.

Breda Gannon
Senior Planning Inspector

20th March, 2019