



An  
Bord  
Pleanála

## Inspector's Report ABP-303169-18

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<b>Development</b>	Demolition of a chalet structure and construction of a single-storey three-bedroom dwellinghouse with on-site wastewater treatment system
<b>Location</b>	Lisfannon townland, Fahan, County Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	18/51106
<b>Applicant(s)</b>	Bernard & Marie McShane
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First-Party
<b>Appellant(s)</b>	Bernard & Marie McShane
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22 <sup>nd</sup> January 2019
<b>Inspector</b>	Colm McLoughlin

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## 1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Lisfannon, approximately 2km to the south of Bunrana town centre and 1.5km to the north of Fahan village in County Donegal, overlooking the waters of Lough Swilly to the west. The site is situated in an area characterised by low-density housing on rising ground overlooking the tidal lough. The site includes 125m frontage to the north and east onto a single-lane private road and almost 70m frontage onto the R238 regional road to the west, which connects Bunrana and the Inishowen peninsula to the north with the N13 national road to the south.
- 1.2. The appeal site is stated to measure 0.98ha and largely comprises open agricultural lands, interspersed with gorse hedges and bounded by post and wire fences. The private road bounding the site serves housing in Lisfannon Heights. The road is in poor condition, in need of resurfacing and regrading, and connects with the regional road at a location where a speed limit restriction of 100km/hr applies and where there is a broken white line and a hard shoulder fronting the appeal site. The appellants' three-bedroom house, toilet block and septic tank are located to the southwest of the site with a right of way vehicular access onto the regional road. A communal sewage treatment plant stated to serve housing on rising ground to the east of the site within Lisfannon Heights is located adjacent to the site. The site is flanked on the west side by detached houses, each with separate access onto the regional road. A steep embankment marks the front boundary of the site with the regional road and electricity powerlines traverse the site in a north-south alignment. There is approximately a 13m increase in levels over the 90m distance from the regional road to the private road.

## 2.0 Proposed Development

- 2.1. The proposed development would comprise the following:
- demolition and removal of a detached single-storey chalet with a stated gross floor area (GFA) of c.51sq.m, a toilet block and a septic tank;
  - construction of a three-bedroom detached single-storey dwellinghouse with a stated GFA of c.123sq.m;

- installation of an on-site wastewater treatment system;
- vehicular access onto a private road, all associated groundworks and landscaping.

**2.2.** In addition to the standard planning application documentation and drawings, the application was accompanied by a Planning Report, a Traffic Report, a Site Suitability Assessment Report addressing on-site disposal of effluent, a Storm Water Design Report, a Report addressing the Impact on Foul and Storm Water Sewers, a letter of consent from the stated landowner consenting to the making of the application and a letter from the stated owners of the private road serving the site, consenting to the use and upgrade of the private road.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. The Planning Authority issued a notification of a recommendation to refuse to grant permission for the proposed development for three reasons:

Reason 1 - contrary to replacement rural housing Policy RH-P-7;

Reason 2 - premature pending resolution of wastewater treatment services;

Reason 3 - adverse impacts on European sites.

#### **3.2. Planning Authority Reports**

3.2.1. Planning Report

The report of the Planning Officer (November 2018) reflects the decision of the Planning Authority and noted the following:

- there is no record of planning permission for the chalet structure and the proposed house would fail to respect the scale and positioning of this chalet structure, which would have impacts on the visual amenities of the area;
- proposed intensification in use of the junction between the private road and the R238 regional road is acceptable, given the low level increase in traffic;

- the existing communal treatment system serves over 30 houses in Lisfannon Heights is not in operation and as a result is leading to pollution of neighbouring waters and nuisance for public health;
- storm water would discharge directly to Lough Swilly Special Protection Area (SPA) (Site Code: 004075) and Lough Swilly Special Area of Conservation (SAC) (Site Code: 002287).

#### 3.2.2. Other Technical Reports

- Environmental Health Officer (HSE) – requested further information regarding the existing provision for wastewater treatment in the area;
- Roads & Transportation Unit – no objection, subject to conditions.

### 3.3. Prescribed Bodies

- Irish Water – no response;
- An Taisce – no response;
- Department of Culture, Heritage & the Gaeltacht – no response.

### 3.4. Third-Party Submission

- 3.4.1. A submission stated to be signed by four local residents of Lisfannon Heights was received by the Planning Authority during consideration of the application. The submission was accompanied by company registration extracts, photographs and extracts from previous planning applications and appeals relating to the site and can be summarised as follows:

#### Housing Policy

- the applicants do not have a local housing need and the existing chalet referred to as the applicants' home does not have planning permission and is not their permanent residence;

### Traffic Safety

- proposed works to the private road should be completed prior to commencement of house building works and concerns are raised regarding traffic safety;
- use of the applicants' right of way directly onto the R238 as the vehicular access to serve the site should be considered;
- parking on the hard shoulder restricts visibility at the junction of the private road with the R238;

### Impact on Visual Amenities

- the proposed house would have greater visual impact than the houses previously refused permission due to their impact on the visual amenities of the area;
- the previous applications for a house on the site, including Donegal County Council (DCC) Refs. 07/70043 and 15/51174, were refused for reasons relating to the impact on a designated scenic route (R238) and the prominence of the house;

### Services

- impacts on water supply would arise for residents in Lisfannon Heights due to reduced water pressure;
- details of boundary treatments, surface water drainage, maintenance measures for the substandard private road, a more up-to-date traffic survey and details of existing powerlines on site have not been submitted;
- potential for increased flood risk arising for other properties;
- an existing sewerage pipe traverses the site;

### Other Matters

- overlooking of neighbouring properties would arise;
- would the rights of other users of the private road be respected;
- impact on European sites;

- there is a lack of clarity as to whether or not services and roads would be taken-in-charge by the Local Authority.

## 4.0 Planning History

### 4.1. Appeal Site

- 4.1.1. There is an extensive recent planning history associated with the appeal site, including the following applications and appeals;
- ABP Ref. PL05E.247131 (DCC Ref. 16/50037) – the current applicants’ application for permission for a house was refused by the Board in December 2016 due to conflicts with rural housing policy, the inadequacy of foul and surface water services and the substandard condition of the private road serving the site;
  - DCC Ref. 15/51174 – the current applicants’ application for permission for a house and an on-site wastewater treatment system on the northern side of the site was refused in October 2015 for reasons relating to the prominent position of the house, traffic safety concerns and the deficiency in local stormwater infrastructure;
  - ABP Ref. PL05E.232863 (DCC Ref. 08/70758) – permission for a house on the southern side of the site and a 955m-long sewer along the R283 was refused in August 2009 for reasons relating to the lack of capacity to deal with wastewater, the prominence of the house and the lack of details submitted;
  - DCC Ref. 07/70519 – the current applicants’ application for permission for a replacement house and on-site wastewater treatment system on the southwestern side of the site was refused in August 2007 for numerous reasons including non-compliance with rural housing policy, the visual impact and traffic hazard;
  - DCC Ref. 06/70043 – permission for a house and an on-site wastewater treatment system along the R238 frontage of the site was refused in February 2006 for reasons relating to traffic hazard, the impact on scenic amenities and the capacity to treat wastewater.

## **4.2. Surrounding Sites**

- 4.2.1. There have been numerous planning applications in the vicinity, primarily relating to domestic extensions and infill housing developments.

## **5.0 Policy & Context**

### **5.1. National Guidelines**

- 5.1.1. Objective 19 of the National Planning Framework – Project Ireland 2040 outlines that within areas under urban influence, single housing in the countryside will be facilitated based on the core consideration of a demonstrable economic or social need to live in the rural area. The following national guidelines are relevant to this appeal:

- Sustainable Rural Housing Guidelines for Planning Authorities (2005);
- EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses (2009).

### **5.2. Donegal County Development Plan**

- 5.2.1. The policies and objectives of Donegal County Development Plan 2018-2024 are relevant. The site is outside the settlement envelope delineated for Buncrana on Map 13.1 of the Plan. Map 6.2.1 of the Plan identifies the appeal site as being within an 'area under strong urban influence', where the Plan states that 'it is necessary to manage the extent of development, whilst facilitating those with a genuine rural-generated housing need'. Policy RH-P-5 of the Plan outlines specific rural housing policy relating to areas under strong urban influence, which generally requires an applicant for housing in these areas to provide evidence that they, or their parents or grandparents, have resided at some time within the area for a period of at least 7 years. New holiday home development will not be permitted in these areas. Proposals are subject to compliance with all other relevant policies of the Plan, including policies RH-P-1 and RH-P-2, which provide guidance regarding the design of rural housing, integration of housing into the landscape, controlling suburbanisation and retaining the rural character of an area.



5.2.2. Policy RH-P-7 relating to replacement housing in rural areas, is particularly pertinent to this appeal, which states that:

- 'It is a policy of the Council to consider proposals for the replacement of dwellings in rural areas, where:
  - (a) The Planning Authority is satisfied that the existing dwelling does not make any significant contribution to the built heritage of the area in question and;
  - (b) The replacement dwelling would be of a scale and form generally consistent with that of the existing house on the site and would not result in any significant additional visual impact over and above that arising as a result of the existing development on site and;
  - (c) Adequate provision can be made for wastewater treatment on site; and
  - (d) The proposed development would otherwise comply with all other relevant policies of the County Development Plan'.

5.2.3. Development guidelines and technical standards are outlined in Appendix 3 to the Plan, with the following sections considered to be relevant to this appeal:

- Section 2.2 – Road Safety Audit;
- Section 2.4 – Entrances;
- Section 2.5 – Surface Water and Roadside Drainage.

5.2.4. 'Building a House in Rural Donegal: A Location Siting and Design Guide' forms Appendix 4 to the Plan and comprises a technical and development management guidance for rural housing. Objective RH-O-5 of the Plan aims to promote the siting and design of rural housing with particular regard to the Landscape Classifications illustrated in Map 7.1.1 of the Plan. The subject site is situated in an area of high-scenic amenity (HSA), which are considered to have capacity to absorb sensitively-located development.

5.2.5. Policy WES-P-11 of the Plan requires applications for single dwellings in un-sewered areas to include a site suitability assessment for disposal of wastewater on-site and details of the proposed wastewater treatment system, in compliance with the EPA standards.

- 5.2.6. Policy T-P-4 of the Plan sets out that permission will not be given for ‘developments requiring new accesses or which would result in the adverse intensification of existing access points onto National Roads where the speed limit is greater than 60kph or roads treated to National Roads Standards’. Map 5.1.3 illustrates the roads to which Policy T-P-4 applies, including the R238 fronting the appeal site.

### **5.3. Environmental Impact Assessment - Preliminary Examination**

- 5.3.1. Having regard to the nature and scale of the proposed development and the location of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

- 6.1.1. A first-party appeal has been submitted to the Board and is accompanied by a Natura Impact Statement (NIS), a letter of support from a local elected representative and a set of photographs. The grounds of appeal can be summarised as follows:

#### Planning Policy

- the proposed development overcomes all three previous reasons for refusal attached to the Board’s decision under ABP Ref. PL05E.247131, particularly given the fact that the appellants are now proposing a replacement house, rather than the previously refused additional house;
- the proposed development would provide planning gain via improvements to services, including roads, access, wastewater treatment and surface water drainage;
- the appellants’ chalet, dating from the 1980s, is no longer fit for purpose and the proposed development complies with the requirements listed under Policy

RH-P-7 of the Plan, using the most appropriate location on site to construct a modern house;

- based on the previous decision of the Board (ABP Ref. PL05E.247131) the appellants would be unable to comply with Policy RH-P-5 of the Plan, as they already own a house in the area, and as such a replacement house is their only option to provide a new family home;
- the proposed house would have limited visual impact in the context of the immediate hillside housing and the proposed landscaping, as acknowledged in the Planning Officer's report;

#### Traffic Safety & Access

- the existing direct and substandard access onto the R238 serving the chalet structure would no longer be needed as part of the proposed development;
- the revised access arrangements would not increase traffic and would use the private road to gain safer access to the R238, where adequate sight visibility is available;
- the private road serving the proposed house would be upgraded and improved as part of the proposed development, including provision for surface water drainage, which would be to the benefit of the 30 houses that use this road. Such works could be conditioned to be undertaken prior to occupation of the house;

#### Services

- the existing chalet is served by substandard means of dealing with wastewater, in the form of a blockwork septic tank draining to a soakaway and an external toilet block connecting to the communal treatment system serving houses in Lisfannon Heights, which periodically experiences operational difficulties;
- wastewater treatment to relevant EPA standards is proposed to serve the house, as presented in the Site Suitability Report submitted and there would be no increase in loadings based on bedroom numbers existing and proposed;

- the communal treatment plant is excluded from the site and sufficient area surrounding is provided to allow for the future repair, augmentation and/or maintenance of this plant;
- the onus is on the Local Authority and households connected to the communal treatment plant to address failings in the plant and address pollution arising from same;
- surface water from the existing chalet drains to an outfall within the golf links and a similar approach would be provided for under the subject proposals;
- the proposed surface water drainage proposals offer improvements to the existing situation with the design intended to increase the overall capacity to retain rainwater during heavy rainfall events and thereby reduce potential for flooding;
- there would be scope in the future for surface water drainage serving Lisfannon Heights to connect with surface water drainage infrastructure that is intended to be extended from Buncrana along the R238;

#### Appropriate Assessment

- the NIS submitted concludes that subject to mitigation measures, the project would not result in significant adverse effects on the integrity of European sites, in light of the sites' consideration objectives.

## **6.2. Observations**

6.2.1. None received.

## **6.3. Planning Authority Response**

6.3.1. The response of the Planning Authority to the grounds of appeal raised the following:

- the principle of the development is not acceptable, as Policy P-RH-7 of the Plan does not facilitate housing where this would replace unauthorised housing;
- it is accepted that the communal treatment plant is outside the site boundaries based on the site layout plan drawing (No.PP-MW-01), but this would not

address the Planning Authority's concerns regarding the prematurity of the development pending resolution of problems with the treatment plant;

- the submission of a NIS is acknowledged by the Planning Authority and this clearly justifies their initial reason for refusal based on the absence of same.

## **7.0 Assessment**

### **7.1. Introduction**

7.1.1. The immediate area surrounding the appeal site has the appearance of a suburban area, being characterised by low-density housing. It is defined as a rural area within the Donegal County Development Plan 2018-2024, the statutory plan for this area. I am aware of five previous planning applications for a house on the appeal site that have been refused planning permission by either the Planning Authority or An Bord Pleanála since 2006. Within the grounds of appeal it is asserted that the subject proposals overcome the most recent reasons for refusal. While the site is surrounded by residential properties, the proposed house would be sufficient distances from the nearest houses to avoid undue impacts on neighbouring residential amenities. I consider the substantive planning issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Rural Housing Policy;
- Services;
- Traffic Safety.

### **7.2. Rural Housing Policy**

7.2.1. The appellants are stated to reside in a chalet structure, located in the southwestern corner of the site, to the rear of housing fronting onto the regional road. The most recent refusal of planning permission by the Board in December 2016 under ABP Ref. PL05E.247131, highlighted that the appellants could not meet rural housing policy, as they already reside in the area. To overcome this the appellants' now

propose to demolish the chalet structure and replace this with a new family home, approximately 115m to the north of the chalet.

- 7.2.2. Reason for refusal No.1 of the recommendation issued by the Planning Authority states that the proposed development would not comply with replacement rural housing Policy RH-P-7 of the Development Plan, as the existing chalet to be demolished does not have the benefit of planning permission and as the location of the proposed house would be substantially removed from the location of the chalet. The grounds of appeal state that the appellants' chalet, dating from the 1980s, is no longer fit for purpose and it is asserted that the proposed development complies with the requirements listed under Policy RH-P-7 of the Plan, using the most appropriate location on site to construct a modern family home. It is also asserted that the proposed development would have significant gain from a planning and environmental perspective for the immediate area, by virtue of the improved servicing arrangements for surface water and wastewater, alongside the upgrade of the private road serving the site and Lisfannon Heights.
- 7.2.3. The subject site is outside the settlement framework boundary for Buncrana, in an 'area under strong urban influence'. Policy RH-P-7 of the Plan sets out the key requirements to be met when considering the acceptability or otherwise of applications for replacement housing in rural areas, including the contribution of the existing house to the built heritage, wastewater treatment proposals and the visual impacts. The existing chalet does not make a significant contribution to the built heritage of the area. With regard to the need to consider the adequacy of wastewater treatment against Policy RH-P-7, this is undertaken in Section 7.3 below. While I recognise that permission was refused previously for a house on the appeal site based on the visual impact of the development, given the modest scale of the proposed house and the pattern of development in the area, including extensive housing on higher ground to the east and along the R238, I am satisfied that the proposed house would have negligible impact on the visual amenities of the area.
- 7.2.4. According to the Planning Authority the chalet does not have the benefit of planning permission and according to the appellants it was constructed in the 1980s. Details included with a previous application of the appellants (ABP Ref. PL05E.247131 / DCC Ref. 16/50037) outline that the appellants have resided in the area since 2006. The appellants have included a letter of consent to make the application, and I note

that the stated owner of the site was also the stated owner of the site intended to accommodate a house under ABP Ref. PL05E.247131 and now intended to accommodate the subject proposed house.

- 7.2.5. The demolition and removal of the existing chalet is not been undertaken to facilitate the proposed new house, given that the proposed house would be approximately 115m from the existing chalet. The wording used in Policy RH-P-7 provides for replacement housing on the site of an existing house and not the provision of replacement housing in an alternative location, a significant distance removed from the existing house. Consequently, I am satisfied that the proposed development would be contrary to the provisions outlined under Policy RH-P-7 of the Development Plan. Furthermore, the proposed development would add to the suburban pattern of development in a rural area, which would be contrary to the provisions outlined under Policy RH-P-2 of the Development Plan. Accordingly, permission for the proposed development should be refused for reasons relating to non-compliance with rural housing policies.

### **7.3. Services**

- 7.3.1. Refusal reason No.2 of the recommendation issued by the Planning Authority stated that the existing communal wastewater treatment system serving housing within Lisfannon Heights is not functioning correctly and that this needs to be resolved and may require additional adjoining lands in order to achieve same. The communal treatment system is approximately 9m from the boundary with the appeal site and 76m from the proposed house. The grounds of appeal assert that the existing chalet uses a substandard septic tank draining to a soakaway for wastewater treatment and that the proposed decommissioning of this, as part of the demolition and removal of the existing house, would have environmental benefits.
- 7.3.2. It is not intended that the proposed house would connect into the communal wastewater treatment system, rather it would be provided with its own on-site wastewater treatment system. A Site Suitability Assessment report based on EPA guidance has been submitted with the application and this notes that there are no watercourses or wells within 250m of the proposed location for the on-site wastewater treatment system. The Site Suitability report states that a trial hole was examined in February 2015 and bedrock was encountered at 2.5m depth.

Percolation tests undertaken revealed an average T-value of 44. An initial  $P_{100}$  value of 161 was recorded and where this value is less than 210, a standard test is undertaken to establish if it is possible to install a constructed percolation area or a polishing filter. This may also be required given the sloping topography on site. The results of the tests revealed a standard P-value of 51. Given the initial T-value and the guidance within the EPA Code of Practice, where a P-value of  $3 \leq P \leq 75$  is encountered, the conditions on site are suitable for a wastewater treatment system comprising secondary treatment (mechanical aeration) with a polishing filter at ground surface or overground.

- 7.3.3. The appeal site is located in an area that is served by piped sewerage infrastructure connecting to a communal wastewater treatment system. The Planning Authority state that the existing communal treatment plant adjacent to the site, intended to serve Lisfannon Heights was not operational when assessing the proposed development in November 2018 and as a consequence this is resulting in public health nuisance. For the 2010-2015 period, the Coastal Water Quality Status of the nearest surface water is of 'high' quality and groundwater status is of 'good' quality, according to the EPA. Near surface susceptibility to nitrate at the site is low, while near surface susceptibility for phosphates is moderate according to EPA data. The site layout plan (Drawing No.PP-MW-01) submitted with the application identifies two existing underground services traversing the appeal site and connecting from housing in Lisfannon Heights into the communal treatment system. It is not clear from the application and appeal details, how it would be intended to safeguard the future maintenance or upgrade of these services on site, which are not in control of the Local Authority.
- 7.3.4. The Sustainable Rural Housing Guidelines for Planning Authorities require housing in un-serviced areas and any on-site wastewater treatment systems to be designed, located and maintained in a way that protects water quality. Notwithstanding that the proposed on-site wastewater treatment system may be designed and operated to EPA standards and the proposals to decommission the existing substandard septic tank system serving the chalet, taken in conjunction with the existing density of development in a rural area inadequately served by wastewater treatment, and the existing services traversing the appeal site, there is potential for the proposed development to exacerbate existing problems relating to wastewater treatment



beyond the specific appeal site. Consequently, the proposed development would be contrary to the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities and would have potential to impact on public health.

- 7.3.5. A Storm Water Design Report is submitted as part of the application and the proposed surface water drainage layout for the development is illustrated on Drawing No.F1271 01 Rev C. Two options are presented as part of the proposed development, including a future option to connect surface water drainage infrastructure serving the site and Lisfannon Heights with services extending from Buncrana town. The second current option is to provide a gravel soakaway on site, supplemented by a piped discharge ultimately leading to an open drain within the golf club lands on the opposite side of the regional road. The provision of wholly piped surface water drainage to serve the appeal site and the private roads in Lisfannon Heights is dependent on the future extension of surface water drainage from Buncrana and a timeline has not been presented for same by parties to the appeal. The drainage option that would be currently attainable would appear to show the surface water from Lisfannon Heights draining into a gravel soakaway. The hardstanding catchment area illustrated within the Storm Water Design Report for Lisfannon Heights relates only to the private road element. It is not clear whether or not individual houses within Lisfannon Heights are provided with individual soakaways and it is therefore unclear as to whether or not sufficient capacity has been designed into both surface water drainage options presented, including the required size of the proposed gravel soakaway on site. Given the steeply sloping nature of the site (1:8) and the location of the proposed percolation area downslope of the gravel soakaway, this design feature has the potential to lead to surface waters inundating the percolation area. In conclusion, based on the details provided with respect to both drainage options, I am not satisfied that adequate surface water drainage has been proposed as part of the subject development.
- 7.3.6. The proposed development would, therefore, be prejudicial to public health and would be likely to cause deterioration in the quality of waters. Accordingly, permission should be refused for reasons relating to wastewater treatment and surface water drainage.

## **7.4. Traffic & Access**

- 7.4.1. The appeal site is located off the R238 regional road, which has a speed-limit restriction of 80km/h. The R238 does not include footpaths, but does include a hard shoulder along the roadside at the junction with the private road proposed to serve the appeal site. A single broken white line marks the median of the regional road fronting this junction. Approximately 30 houses within Lisfannon Heights are served by this existing private road off the R238. Policy T-P-4 of the Plan sets out that permission will not be given for developments requiring new accesses or which would result in the adverse intensification of existing access points onto roads treated to National Roads Standards, which includes the subject stretch of the R238 between Bridgend and Buncrana.
- 7.4.2. In assessing the application, the Planning Authority note that the existing direct access onto the regional road would be closed off as part of the proposed development. The grounds of appeal also assert that this existing direct and substandard access onto the R238 serving the chalet structure would no longer be needed as part of the proposed development. I note that the existing access is a right of way and also serves other houses on both sides of this right of way. I am not satisfied that the access can or would be closed off in the event of permission being granted. Should the Board be minded to grant permission, details of the method by which the access would be physically closed off to the existing house should be requested by condition.
- 7.4.3. In considering a similar access proposal under ABP Ref. PL05E.247131 (DCC Ref. 16/50037) the Board refused permission in part due to the substandard condition of the drainage and the surface conditions of the private road. This situation had not changed when the site was inspected in January 2019. Under the subject application, the appellants state that they would upgrade the private access road to address concerns relating to drainage and surfacing. Subject to conditions, the Roads and Transportation section of the Planning Authority do not object to the proposed development. Within the grounds of appeal, the appellants state that they would be happy for a condition to be attached, requiring the upgrade works to the road to be undertaken prior to occupation of the house and I note that the appellants have consent from the stated owners of the road to undertake these works. The

proposed development would not result in a significant increase in traffic onto this strategic route and would provide for upgrade of the access. Consequently, subject to conditions I am satisfied that previous concerns relating to traffic hazard have been addressed as part of the proposed development, and permission should not be refused for reasons relating to traffic safety and access.

## **8.0 Appropriate Assessment**

### **8.1. Introduction – Stage 1 Screening**

- 8.1.1. The proposed development is described in section 2 of this report. Reason No.3 of the recommendation to refuse permission issued by the Planning Authority, stated that in the absence of a Natura Impact Statement (NIS), the Planning Authority could not be satisfied that the proposed development would not have an adverse impact on the integrity of neighbouring European sites. In response to this, the appellants submitted an NIS with their appeal.
- 8.1.2. It is proposed to drain surface water from the site under the R238 regional road in order to discharge to an open drain on the golf links lands on the opposite side of the road. This open drain connects directly to Lough Swilly. Surface water drainage proposals also comprise a drainage channel to a gravel soakaway off the private road serving Lisfannon Heights, on the eastern higher side of the site.

### **8.2. Description of European Sites**

- 8.2.1. There are seven European sites within 15km of the appeal site. The Lough Swilly candidate Special Area of Conservation (cSAC) (Site Code: 002287) and Lough Swilly Special Protection Area (SPA) (Site Code: 004075) are located approximately 120m to the west. Other designated sites within 15km of the appeal site include the Horn Head to Fanad Head SPA approximately 10.5km to the north, North Inishowen Coast SAC (Site Code: 002012) approximately 11.2km to the north, Mulroy Bay SAC (Site Code: 002159) approximately 13.2km to the west, Leannan River SAC (Site Code: 004087) approximately 13.6km to the southwest, Lough Foyle SPA (Site Code: 002012) approximately 14.2km to the east and Ballyhoorisky Point to Fanad Head SAC (Site Code: 001975) approximately 14.6km to the northwest.

8.2.2. With the exception of the Lough Swilly cSAC and Lough Swilly SPA, I am satisfied that the other sites within 15km of the appeal site can be ‘screened out’ on the basis that significant effects on these European sites could be ruled out as a result of the separation distance from the appeal site to the European sites or the location of the European sites upstream of or across expansive open maritime waters from the appeal site.

The applicant’s AA Screening Report also concluded that a Stage 2 Appropriate Assessment is required to determine the potential effects of the proposed development and whether the effects, either individually or in-combination with other plans or projects, would be likely to adversely affect the integrity of Lough Swilly cSAC (Site Code: 002287) and Lough Swilly SPA (Site Code: 004075), in view of the sites’ conservation objectives and based on reasonable scientific knowledge.

**8.3. Appropriate Assessment – Stage 2**

**8.3.1. Conservation Objectives**

Lough Swilly cSAC comprises the inner part of Lough Swilly. The following table lists the Conservation Objectives set for Lough Swilly cSAC:

<b>Table 1. Conservation Objectives for Lough Swilly cSAC (Site Code: 002287)</b>	
1130 – Estuaries	To maintain the favourable conservation condition of Estuaries
1150 – Coastal Lagoons	To restore the favourable conservation condition of Lagoons
1330 – Atlantic salt meadows	To restore the favourable conservation condition of Atlantic salt meadows
1355 - Otter ( <i>Lutra lutra</i> )	To maintain the favourable conservation condition of Otter
91A0 - Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles	To restore the favourable conservation condition of Old oak woodland with <i>Ilex</i> and <i>Blechnum</i>

The following table lists the Conservation Objectives set for Lough Swilly SPA:

<b>Table 2. Conservation Objectives for Lough Swilly SPA (Site Code: 004075)</b>	
A005 - Great Crested Grebe ( <i>Podiceps cristatus</i> )	To maintain the favourable conservation condition of Great Crested Grebe
A028 – Grey Heron ( <i>Ardea cinerea</i> )	To maintain the favourable conservation condition of Grey Heron
A038 – Whooper Swan ( <i>Cygnus Cygnus</i> )	To maintain the favourable conservation condition of Whooper Swan
A043 – Greylag Goose ( <i>Anser anser</i> )	To maintain the favourable conservation condition of Greylag Goose
A048 Shelduck ( <i>Tadorna tadorna</i> )	To maintain the favourable conservation condition of Shelduck
A050 – Wigeon ( <i>Anas Penelope</i> )	To maintain the favourable conservation condition of Wigeon
A052 – Teal ( <i>Anas crecca</i> )	To maintain the favourable conservation condition of Teal
A053 – Mallard ( <i>Anas platyrhynchos</i> )	To maintain the favourable conservation condition of Mallard
A056 – Shoveler ( <i>Anas clypeata</i> )	To maintain the favourable conservation condition of Shoveler
A062 – Scaup ( <i>Aythya marila</i> )	To maintain the favourable conservation condition of Scaup
A067 – Goldeneye ( <i>Bucephala clangula</i> )	To maintain the favourable conservation condition of Goldeneye
A069 – Red-breasted Merganser ( <i>Mergus serrator</i> )	To maintain the favourable conservation condition of Red-breasted Merganser
A125 – Coot ( <i>Fulica atra</i> )	To maintain the favourable conservation condition of

	Coot
A130 – Oystercatcher ( <i>Haematopus ostralegus</i> )	To maintain the favourable conservation condition of Oystercatcher
A130 – Knot ( <i>Calidris canatus</i> )	To maintain the favourable conservation condition of Knot
A149 – Dunlin ( <i>Calidris alpina</i> )	To maintain the favourable conservation condition of Dunlin
A160 – Curlew ( <i>Numenius arquata</i> )	To maintain the favourable conservation condition of Curlew
A162 – Redshank ( <i>Tringa totanus</i> )	To maintain the favourable conservation condition of Redshank
A164 – Greenshank ( <i>Tringa nebularia</i> )	To maintain the favourable conservation condition of Greenshank
A179 – Black-Headed Gull ( <i>Chroicocephalus ridibundus</i> )	To maintain the favourable conservation condition of Black-headed Gull
A182 – Common Gull ( <i>Larus canus</i> )	To maintain the favourable conservation condition of Common Gull
A191 – Sandwich Tern ( <i>Sterna sandvicensis</i> )	To maintain the favourable conservation condition of Sandwich Tern
A193 – Common Tern ( <i>Sterna hirundo</i> )	To maintain the favourable conservation condition of Common Tern
A395 – Greenland White-fronted Goose ( <i>Anser albifrons flavirostris</i> )	To maintain the favourable conservation condition of Greenland White-fronted Goose
A999 – Wetlands & Waterbirds	To maintain the favourable conservation condition of the wetland habitat in Lough Swilly SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

### 8.3.2. **Potential Effects**

#### Is the Project necessary to the Management of European sites?

The NIS submitted states that the project site is not directly connected with Lough Swilly cSAC (Site Code: 002287) and Lough Swilly SPA (Site Code: 004075). The project is not necessary to the management of any European site.

#### Direct, Indirect or Secondary Effects

According to the NIS, the potential direct, indirect and secondary effects that could arise from the project, which would be likely to affect European sites with connectivity to the project site in light of their conservation objectives, include the following:

- deterioration of water quality resulting from pollution, associated with construction, operation and decommissioning;
- disturbance of species during construction.

#### In-combination or Cumulative Effects

Potential for in-combination effects with neighbouring projects are listed in Section 3.6 of the NIS.

### 8.3.3. **Mitigation Measures**

Measures listed in the NIS to address impacts on European sites include:

- site preparation and construction to accord with Inland Fisheries Ireland (IFI) 'Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites';
- additional care when using concrete and cement during construction;
- provision of a works exclusion area around the malfunctioning communal tank;
- on-site wastewater treatment to comply with EPA standards;
- bunding to fuel tanks;
- no interference with habitats outside the site;

- control of sediments, including provision of a fuel interceptor to surface water drain;
- no outside lighting directed towards Lough Swilly, no herbicides and no exotic species.

#### 8.3.4. **Likely Effects**

As per the measures listed above, the project includes features to avoid pollutants or silt moving from the site, including surface water drainage, decommissioning of the wastewater treatment system and avoidance of the communal wastewater treatment area. With the implementation of the integral project design features, good construction site management, including the site set up and the pollution prevention features outlined in section 3.5 of the NIS, I am satisfied that the proposed development would not result in a reduction in the quality of water entering waterbodies within the cSAC and SPA habitats referenced above during the construction phase.

The implementation of good operation, maintenance and monitoring of the wastewater treatment system during the operational phase, as outlined within the planning application and the NIS would form an integral aspect of the project according to the applicant. However, concerns outlined in Section 7.3.5 of this report, refer to the existing problems with respect to surface water drainage and wastewater drainage in the immediate area of the appeal site. In the absence of a comprehensive plan to deal with these problems and the proposed location and design of a gravel soakaway on the appeal site, upgradient of the proposed on-site wastewater treatment system, the project has significant potential to exacerbate an existing unsatisfactory situation regarding environmental pollution. Given the direct and short stretch (120m) of the hydrological connection that would be formed by a surface water sewer connecting the appeal site and the neighbouring Lough Swilly cSAC and Lough Swilly SPA there is significant potential to impact on water quality entering the neighbouring cSAC and SPA habitats during the operational phases. The deterioration in water quality would have significant potential to adversely impact on the integrity of Lough Swilly cSAC and Lough Swilly SPA, in light of their Conservation Objectives, which refer to various water-dependent bird species and habitats.



### 8.3.5. **Appropriate Assessment – Stage 2 Conclusion**

On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of Lough Swilly cSAC (Site Code: 002287) and Lough Swilly SPA (Site Code: 004075), in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

## 9.0 **Recommendation**

9.1. I recommend permission be **refused** for the reasons and considerations set out below.

## 10.0 **Reasons and Considerations**

1. Having regard to the nature of the proposed development and to the provisions of the Donegal County Development Plan 2018-2024, it is considered that the proposed development would not comply with the requirements set out in Policy RH-P-7 of the Development Plan, which outline the circumstances where replacement housing would be acceptable in a rural area, as the proposed house would be located a significant distance from the existing house to be replaced. Furthermore, the proposed development would contribute to the expansion of a suburban pattern of development in a rural area and, therefore, would be contrary to Policy RH-P-2 of the Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The locality of this proposed dwelling is characterised by inadequate surface water management infrastructure and information on file suggests that the area also suffers from pollution due to inadequate foul effluent treatment and disposal infrastructure for existing dwellings in the area, which includes existing infrastructure traversing the site. It is considered that, in the absence of a comprehensive plan to deal with these problems, the addition of a further domestic wastewater treatment plant and further surface water discharges

would exacerbate an existing unsatisfactory situation regarding environmental pollution and would be contrary to the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities, which aim to protect water quality. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

3. On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of Lough Swilly cSAC (Site Code: 002287) and Lough Swilly SPA (Site Code: 004075), in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

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Colm McLoughlin  
Planning Inspector

20<sup>th</sup> March 2019