



An  
Bord  
Pleanála

## Inspector's Report ABP-303411-19

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|-------------------------------------|---|
| <b>Development</b>                  | Single-storey two-bedroom dwellinghouse, garage, wastewater treatment system, vehicular access and associated works |
| <b>Location</b>                     | Glenleary, Ramelton, County Donegal   |
| <b>Planning Authority</b>           | Donegal County Council  |
| <b>Planning Authority Reg. Ref.</b> | 18/51627  |
| <b>Applicant(s)</b>                 | Edwin Richards  |
| <b>Type of Application</b>          | Permission  |
| <b>Planning Authority Decision</b>  | Grant   |
| <b>Type of Appeal</b>               | Third-Party   |
| <b>Appellant(s)</b>                 | Christopher & Sonyia McCleane   |
| <b>Observer(s)</b>                  | None  |
| <b>Date of Site Inspection</b>      | 10 <sup>th</sup> April 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 rural townland of Glenleary, approximately 2km south of Ramelton in north County Donegal. The surrounding area comprises rolling agricultural fields and commercial forestry, bordered by mature hedgerows and trees, interspersed with rural housing and agricultural buildings. An equestrian riding school is located 60m to the west of the site.
- 1.2. The site comprises c.0.26ha of agricultural land accessed by a single lane road (L-5812-1) that serves agricultural fields and three residences; Cedar Lodge, Glenleary House and Glenleary Farm Cottage. A recently constructed house is also located on the northern side of this access road, 60m to the northwest of the appeal site. The Paddocks, comprising four detached houses, is located 100m to the southwest of the site. The local road network serving the site connects with the R245 regional road, approximately 750m to the southwest of the site. With the exception of the eastern boundary, which is marked by an overgrown track that is only accessible on foot, the boundaries of the site are not marked on the ground. There is approximately a 2m fall in ground levels from the southwestern corner to the northeastern corner of the site, while grounds levels in the wider area drop gradually in a southeast direction.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:
- construction of a two-bedroom detached single-storey dwellinghouse with a stated gross floor area (GFA) of 174sq.m;
  - construction of a detached single-storey garage with a GFA of 28sq.m;
  - installation of a wastewater treatment system, including septic tank;
  - vehicular access;
  - connection to public mains water supply;
  - all associated groundworks and landscaping.
- 2.2. In addition to the standard planning application documentation and drawings, the application was accompanied by a site suitability assessment report addressing on-site disposal of effluent, a traffic survey statement, a letter of consent from the stated

owner of the site, Charles Roarty, to make the application and to undertake sight visibility works at the proposed entrance, a supplementary housing needs application form and a supporting statement from the applicant.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. The Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 14 conditions, including the following:

Condition No.2 – occupancy clause;

Condition No.7 – provision of visibility splays at the entrance.

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

3.2.1. Planning Report

The report of the Planning Officer (December 2018) noted the following:

- the site is within a 'stronger rural area', which is also designated as an area of high scenic amenity (HSA) in the Development Plan;
- the applicant has resided in the area for 15 years and the bona fides of a local representative are included to support this. Rural housing need compliant with Policy RH-P-3 of the Donegal County Development Plan 2018-2024 has been established;
- the siting and design of the house is acceptable in this HSA area and given the existing spatial pattern of development;
- the vehicular access to the site is acceptable given the traffic speed limitations and as the road network has sufficient capacity to accommodate the construction and post-construction traffic associated with the development;
- flood concerns raised by a third-party do not relate to the site itself.

3.2.2. Other Technical Reports

- Executive Engineer (Roads) – no objection, subject to conditions.

### **3.3. Prescribed Bodies**

- Environmental Health Officer (HSE) – conditions relating to wastewater treatment and drainage should be attached;
- Irish Water – no objection, subject to conditions.

### **3.4. Third-Party Observations**

- 3.4.1. Two third-party submissions, both accompanied by photographs, were received from neighbouring residents to the immediate northeast of the appeal site in Glenleary House and Glenleary Farm Cottage, with the issues raised covered in the grounds of appeal below. It also stated by the Planning Authority that a representation was made regarding the application by a local-elected representative.

## **4.0 Planning History**

### **4.1. Appeal Site**

- 4.1.1. I am not aware of any recent planning applications for development on the appeal site.

### **4.2. Surrounding Sites**

- 4.2.1. There have been a number of recent planning applications for residential and recreational development on the neighbouring lands, including the following:
- ABP Ref. PL05E.301439 / DCC Ref. 18/50125 – permission refused by the Board in January 2019 for a house and on-site wastewater treatment system on a site 500m to the northwest, due to the disorderly form of development, excessive density of suburban housing and concerns regarding groundwater vulnerability;
  - ABP Ref. PL05E.242010 / DCC Ref. 13/50339 – permission granted by the Board in October 2013 to Charles Roarty for a two-storey residential building for the purposes of short-stay accommodation ancillary to the riding stables and served by an on-site wastewater treatment system, located adjoining to

the north of the appeal site. The duration of this permission was subsequently extended under DCC Ref. 17/51616 until October 2023;

- ABP Ref. PL05E.242002 / DCC Ref. 13/50340 – permission granted by the Board in October 2013 to Charles Roarty for an indoor equestrian arena, located adjoining to the west of the appeal site. The duration of this permission was subsequently extended under DCC Ref. 17/51615 until October 2023;
- DCC Ref. 04/8282 – permission granted in July 2005 to Charles Roarty for four detached houses and garages served by individual on-site wastewater treatment systems, approximately 90m to the southwest of the appeal site i.e. The Paddocks. Permission was subsequently granted in December 2005 under DCC Ref. 05/50246 to amend two of the house types.

## 5.0 Policy & Context

### 5.1. National Guidance

#### National Planning Framework – Project Ireland 2040

- 5.1.1. Objective 19 of the National Planning Framework 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.

#### Sustainable Rural Housing Guidelines for Planning Authorities

- 5.1.2. The Guidelines provide criteria for managing rural housing requirements, whilst achieving sustainable development. Planning Authorities are recommended to identify and broadly locate rural area typologies that are characterised as being under strong urban influence, stronger rural areas, structurally weak or made up of clustered settlement patterns. The Guidelines also outline how rural-generated housing need to reside in these areas should be defined in the Development Plan and examples of categories of persons that may be used to define same. The appeal site is located in a 'stronger rural area', as set out under Section 5.2 below. Appendix 3 to the Guidelines outlines that the key Development Plan objective in relation to stronger rural areas should be 'to consolidate and sustain the stability of

the population and in particular to strike the appropriate balance between development activity in smaller towns and villages and wider rural areas’.

5.1.3. Other national guidelines relevant to this appeal include:

- Code of Practice - Wastewater Treatment and Disposal Systems serving Single Houses (p.e. ≤) (EPA, 2011).

## **5.2. Donegal County Development Plan 2018-2024**

5.2.1. The policies and objectives of the Donegal County Development Plan 2018-2024 are relevant. The following Development Plan objectives are particularly relevant:

- ‘RH-O-3: To ensure that new residential development in rural areas provides for genuine rural need;
- RH-O-5: To promote rural housing that is located, designed and constructed in a manner that is sustainable and does not detract from the character or quality of the receiving landscape having particular regard to the Landscape Classifications illustrated on Map 7.1.1 and contained within Chapter 7’.

5.2.2. Map 6.2.1 of the Plan identifies the appeal site as being within a ‘stronger rural area’. Within such areas the Plan states that one-off rural-generated housing will be facilitated subject to compliance with all relevant policies and provisions of the Plan. Policy RH-P-3 of the Plan specifically outlines that applications for rural housing in stronger rural areas need to comply with Policies RH-P-1 and RH-P-2 of the Plan and that the applicant must demonstrate that they fit into at least one of the following categories:

- persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base, for example, those working in agriculture, forestry, horticulture etc.;
- persons with a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the existence in the rural area of long established ties (7 years minimum) with immediate family members, or by reason of providing care to a person who is an existing resident (7 years minimum);

- persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location’.

5.2.3. Limitations to the policy are addressed in the Plan, including provisions for exceptional circumstances and restrictions on holiday-home development. Policies RH-P-1 and RH-P-2 provide guidance for rural housing with particular attention to design, integration of proposals into the landscape and the environment, development parameters, suburbanisation and the erosion of the rural character of an area.

5.2.4. The site is within an area of High Scenic Amenity, which is an area defined in the Plan as consisting of landscapes of significant quality that have adequate capacity to absorb sensitively scaled and designed development.

5.2.5. ‘Building a House in Rural Donegal: A Location Siting and Design Guide’ forms Appendix 4 to the Plan and includes technical and development management guidance for rural housing.

### **5.3. Natural Heritage Designations**

5.3.1. The nearest designated sites to the appeal site include Leannan River Special Area of Conservation (SAC) (Site Code: 002176), which is located approximately 2.6km to the northwest, as well as the Lough Swilly SAC (Site Code: 002287) and Lough Swilly Special Protection Area (SPA) (Site Code: 004075), both of which are located approximately 1.7km to the north of the site along the coast.

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

5.4.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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 third-party appeal against the decision of the Planning Authority was submitted by the neighbouring residents of Glenleary House and the issues raised can be summarised as follows:

#### Rural Housing Policy

- proposals need to be considered in the context of live permissions that have not yet commenced, as the additional development proposed would result in overdevelopment of the area;
- the applicant resides in The Paddocks, 100m to the southwest of the site;

#### Access & Traffic

- the road serving the site is in private ownership, it is not a public road and the applicant does not have consent to use this for access or services;
- the condition of the road serving the site is not akin to that of a standard public road;
- the visibility splays required at the proposed entrance to the access road would result in the loss of mature trees;
- the road does not have sufficient capacity to cater for another house, and at times the road is congested with vehicles attending the equestrian school;
- an alternative access could be taken along the overgrown track leading southwards from the appeal site to the local road L-1592-1;

#### Design & Siting

- the proposed house would be highly visible, as it would be situated on slightly elevated ground above the level of neighbouring houses to the northwest;
- the immediate rural area is already heavily developed, as confirmed by the planning history for the owner's landholding;

## Other Matters

- works have commenced on the site, including excavation works along the access road, and these are not referenced in the development description;
- during and after periods of high rainfall, flooding occurs adjacent to the site;
- proposals would devalue property in the area;
- there are existing problems with potable water supply in the area, which would be exacerbated by the subject development;
- there are more appropriate alternative sites within the landholding on lower grounds to the south.

## **6.2. Applicant's Response**

6.2.1. The applicant's response to the grounds of appeal can be summarised as follows:

- the access road serving the proposed development is a local road according to correspondence received by the applicant from the Roads' Engineers in Donegal County Council;
- the road has sufficient capacity to deal with the additional traffic arising from the proposed development;
- the proposed works would not require removal of mature trees along the field boundary to facilitate sight visibility from the proposed site vehicular entrance;
- the applicant has resided in the Glenleary area since 2014 and their existing home in The Paddocks is no longer suitable. Prior to 2014, the applicant resided in Ballyare Glebe 3km to the northwest;
- the proposed house would be no more visually obtrusive than the existing housing in the area and alternative sites were considered;
- the photographs submitted by the appellants to show flooding are the same as those submitted with the previous appeal (ABP Ref. PL05E.242010) decided in 2013, when the Board concluded that surface water drainage could be suitably addressed;

- enforcement investigations (DCC Refs. UD18/207 and UD18/245) have both been concluded and closed.

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

- 6.3.1. The Planning Authority responded to the grounds of appeal by stating that the Planning Officer's previous assessments of the proposed development continue to justify their decision to grant permission.

### **6.4. Observations**

- 6.4.1. None on file.

### **6.5. Further Submissions**

- 6.5.1. The appellants' response to the applicant's submission reaffirms matters raised within the grounds of appeal and also raises the following:
- the applicant has not provided definitive proof that the access road is a public local road;
  - the applicant does not meet local housing need criteria for a new house in this rural area, particularly considering the scale and design of the proposed house;
  - precedent for refusal of permission is provided for in recent Board decisions for one-off housing in the environs of Letterkenny, including appeals relating to sites in Listillon (ABP Ref. PL05E.302932), Castlewray (PL05E.302685), Kilmacrennan (PL05E.301802), Borrihul Mountain Top (PL05E.301443) and Aghnagaddy (PL05E.301439);
  - photographs of the access road serving the site, stated to date from March 2019, are included within the response to reveal recent drainage problems.
- 6.5.2. The Planning Authority's response to the applicant's submission and the appellants' further submission, reaffirms matters raised within their response to the grounds of appeal.

6.5.3. The applicant's response to the appellants' further submission is accompanied by photographs, reaffirms matters raised in their response to the grounds of appeal and raises the following:

- parking congestion is isolated and associated with events at the equestrian facility;
- the precedent cases cited by the appellants fail to refer to the short-stay residential building (ABP. Ref. PL05E242010) and associated indoor equestrian arena (ABP. Ref. PL05E242002) permitted on the adjoining sites;
- reference to flooding in the immediate area of the site is disproportionate and should refer to ponding, which can be addressed via surface water drainage.

## **7.0 Assessment**

### **7.1. Introduction**

7.1.1. 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;
- Access;
- Siting & Design;
- Wastewater Treatment.

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

7.2.1. Map 6.2.1 of the Donegal County Development Plan 2018-2024 identifies the appeal site as being within a 'stronger rural area'. Within such areas the Plan states that one-off rural-generated housing will be facilitated subject to compliance with all relevant policies and provisions of the Plan. Policy RH-P-3 of the Plan specifically outlines that applications for rural housing in 'stronger rural areas' need to comply with Plan policies RH-P-1 and RH-P-2 and that the applicant must demonstrate with evidence that 1.) the applicant's primary employment is in a rural-based activity or 2.)

the applicant has a vital link to the rural area or 3.) that there are exceptional health circumstances.

- 7.2.2. Information provided by the applicant within their application and grounds of appeal states that the applicant currently resides in The Paddocks, Glenleary, approximately 135m to the south of the appeal site. The applicant states that they have resided in the Glenleary area since 2014 and that prior to this they resided in the Ballyare Glebe area, which is located 3km to the northwest of the appeal site. The applicant now wishes to downsize from their current residence and construct a new home. The applicant has not demonstrated that they fit into categories 1 or 3 referred to in Policy RH-P-3 based on their stated employment or health circumstances. In relation to category 2, the applicant must have 'a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the existence in the rural area of long established ties (7 years minimum) with immediate family members, or by reason of providing care to a person who is an existing resident (7 years minimum)'. The applicant has outlined within a statement of housing need the previous locations and periods in which they resided and they have submitted a letter signed by a local representative to confirm that they resided in the subject rural area for in excess of seven years.
- 7.2.3. Initially I note that the information submitted as evidence of the applicant's connections to the area is not entirely definitive, but that this has not specifically been contested by other parties to the appeal. However, I do not consider the need to downsize homes as providing a genuine rural-housing need, particularly where a person already resides in the immediate rural area and given the availability of existing housing within the area (as identifiable via online property searches). The applicant's rural housing need has clearly already been satisfied.
- 7.2.4. Under Policy RH-P-2 of the Development Plan the acceptability of a proposal will be guided, inter alia, by the need for a proposed dwelling to avoid the creation or expansion of a suburban pattern of development in rural areas. The existing pattern of development in the area, including extensive one-off housing, is indicative of the pressure for development of land in this area. I also note the existing permissions for a short-stay residential building (ABP. Ref. PL05E242010) and associated indoor equestrian arena (ABP. Ref. PL05E242002) adjacent to the north and west of the site, as identified on the proposed site layout plan drawing (No.1826-PI-02)

submitted with the application. Consequently, I consider that the proposed development, would further contribute to the creation and expansion of a suburban pattern of development in this rural area.

- 7.2.5. In conclusion, the proposed development would not comply with national policy and policy RH-P-3 of the Development Plan, as the applicant's housing need to reside in this 'stronger rural area' has already been satisfied. Furthermore, the proposed development would be contrary to Policy RH-P-2 of the Development Plan, as it would contribute to the creation and expansion of a suburban pattern of development in a rural area. Permission for the proposed development should be refused for these reasons.

### **7.3. Access**

- 7.3.1. The grounds of appeal assert that the road intended to serve the appeal site is not in control of Donegal County Council and that a stretch of the road is in control of the appellants. Section 10 of the planning application form states that the legal owner of the site is a Charles Roarty. During consultation on the application, the Executive Engineer from the Roads section of Donegal County Council identifies the 'adjoining road' as a 'County Road'. In addressing 'issues relating to title to land', Section 5.13 of the Development Management Guidelines (2007) outlines that the planning system is not designed to resolve disputes about title to land. The Guidelines also advise that where there is doubt in relation to the legal title of an applicant, and following the clarification sought in additional information, some doubt still remains, the Planning Authority may still decide to grant permission. However a grant of permission is the subject of Section 34(13) of the Planning and Development Act 2000, as amended, which states that 'a person shall not be entitled solely by reason of permission under this section to carry out any development'. The applicant has attempted to clarify this matter further as part of their response to the grounds of appeal and I note that during my site visit access along the road was not restricted. Should the Board decide to grant planning permission, the onus is on the applicant to ensure that they have adequate legal interest to carry out the proposed development and use the proposed vehicular access road, and an advice note to this effect should be attached in the event of a permission arising.

- 7.3.2. Within the grounds of appeal it is also asserted that an alternative access could be taken via the overgrown track leading southwards from the site to the local road (L-1592-1). I note that this would require substantial clearance of mature hedgerows and trees along the track and at the junction with the local road to facilitate visibility splays. This track and the lands that would be required for a visibility splay to the northeast are not in control of the owner of the subject site according to the site location plan submitted with the application (Drawing No. 1826/PL-02).
- 7.3.3. As part of the planning application the applicant concluded that average speeds of no more than 42km/hr would be achievable. Table 3 to Appendix 3 of the Development Plan outlines that proposals for single accesses onto local roads, such as that fronting the appeal site where an 80km/hr speed limit applies, require 90m to 120m vision lines in both directions from a point 2.4m setback from the roadside. The Plan also states that deviation from these requirements may be considered upon certification by an applicant's designer. Vision lines from the entrance cannot meet the 90m to 120m required in the Development Plan. The site layout plan drawing (No. 1826 / PL-02) submitted with the planning application illustrates that 50m visibility would be achievable northwards at the entrance to the site off the local road. There is no road to the south, therefore visibility would not be necessary in this direction. The grounds of appeal assert that the achievement of required visibility would necessitate the removal of mature trees along the earthen embankment. The response of the applicant highlights that the mature trees would not be impacted and I note that the site layout plan drawing (No. 1826 / PL-02) identifies that the trees would remain. A letter of consent, allowing the applicant to achieve and maintain a visibility splay of 50m to the north is submitted. Having visited the site and noted traffic speeds achievable, the capacity and condition of the road and the results of the traffic speed survey undertaken, I am satisfied that the proposed sightlines, though deviating from Development Plan standard requirements, would be appropriate.
- 7.3.4. The grounds of appeal assert that the area is subject to flash flooding, and photographs are submitted as evidence of same. I am satisfied that surface water drainage proposals submitted as part of the application and conditions of a permission would suitably address this situation and the proposed development would not exacerbate this situation.

- 7.3.5. While I would have some reservations regarding visibility at the junction between the local road (L-5812-1) to the west and the existing access road, visibility at this junction was considered to be adequate under the previous permissions for a short-stay residential building (ABP. Ref. PL05E242010) and an associated indoor equestrian arena (ABP. Ref. PL05E242002) adjacent to the site.
- 7.3.6. In conclusion, I am satisfied that the sightline available at the access to the road is adequate to cater for the traffic that would be generated by the proposed development. It would not, therefore, give rise to traffic hazard and permission should not be refused for this reason.

#### **7.4. Siting & Design**

- 7.4.1. The site is located in an area of 'High Scenic Amenity' based on Map 7.1.1 of the Development Plan, which are described as areas that have adequate capacity to absorb sensitively-scaled and designed development. The proposed development is for a single-storey detached dwellinghouse and garage with respective roof ridge heights of 6.8m and 4.4m. The house and garage would be situated over 40m from the closest road. The proposed house and garage would not be highly visible from the local road to the west (L-5812-1), as a result of the screening provided by existing agricultural buildings, as well as the roadside and field boundaries, which include mature hedgerows and trees. Views from the wider area, including the local road to the south (L-1592-1), would largely be restricted by virtue of the undulating topography. The site is not visible from protected views, prospects or features of interest identified in the Development Plan.
- 7.4.2. Where intermittently visible from the local road network and the immediate lands, the house and garage would be viewed against a backdrop of mature hedgerows and trees, agricultural buildings and neighbouring rural houses. Furthermore, the proposed design and site layout arrangements would be in accordance with the provisions set out within Appendix 4 to the Development Plan, relating to the location, siting and design guidance for 'Building a House in Rural Donegal'. I also note the existing extended permissions for larger structures on the adjoining lands, including a two-storey short-stay building and an indoor arena.



7.4.3. In conclusion, the design, form and scale of the proposed house and garage would be capable of being absorbed within this 'High Scenic Amenity' area. Consequently, I am satisfied that the proposed development should not be refused for reasons relating to siting and design, and the resultant impact on the visual amenities of the area.

## 7.5. Wastewater Treatment

- 7.5.1. The Site Suitability Report submitted with the planning application notes that the site is located in an area with a poor aquifer category and where groundwater vulnerability is extreme. It also identified that bedrock was not encountered in the 1.8m-deep trial hole. The T-value for the site was calculated as 39 and this indicates that the site is suitable for the treatment and disposal of domestic foul effluent to groundwater by means of a conventional septic tank system. Details submitted clarify that a conventional septic tank with percolation area would be installed and that a minimum of 1.2m subsoil would be maintained between the invert of the percolation pipes and bedrock. I am satisfied that the assessment and the proposed development design details comply with those required within the EPA 'Code of Practice - Wastewater Treatment Systems for Single Houses'.
- 7.5.2. In conclusion, the proposed development would not be prejudicial to public health and would not be likely to cause a deterioration in the quality of waters in the area. Permission should not be refused for reasons relating to wastewater treatment.

## 8.0 Appropriate Assessment

- 8.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 Recommendation

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

## 10.0 Reasons and Considerations

1. The site of the proposed development is located within a stronger rural area, as set out in the 'Sustainable Rural Housing Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating social and economic local need, in accordance with the Donegal County Development Plan 2018-2024. Having regard to the proximity of the subject site to Ramelton and having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. The proposed development would, therefore, be contrary to the Ministerial Guidelines and to the overarching national policy, and having regard to the provisions of the current Donegal County Development Plan 2018-2024, would be contrary to the proper planning and sustainable development of the area.

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Colm McLoughlin  
Planning Inspector

18<sup>th</sup> April 2019