



An
Bord
Pleanála

Inspector's Report 304694-19.

Development	19 no. terraced houses and associated works.
Location	Forquar, Milford, Letterkenny, Co. Donegal.
Planning Authority	Donegal County Council.
Planning Authority Reg. Ref.	1851805.
Applicant	Nela Maxim.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party
Appellant	Sandra Streete and others.
Observer	None.
Date of Site Inspection	16 th August 2019.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is located in Lough Fern Heights, which is a small housing estate at the south-eastern side of the village of Milford in north county Donegal. The site adjoins Ramelton Road, the R245 and the junction of the estate road and the regional road is close to a church and the village centre. The pattern of development in the area includes large areas of agricultural lands and low density residential uses as well as institutions and facilities including a library and a waste recycling depot.
- 1.2. The existing estate Lough Fern Heights comprises 44 no. semi-detached and terraced houses, associated with which are two main communal open space areas. The subject site comprises an infill plot of land, which is adjacent the main spine road. The site topography slopes up from the regional road and varies between 103m and 114m. While the site frontage is marked by the estate road and the reservation for footpaths and a timber fence, the rear is characterised by the presence of a laneway defined with stone walls and there is a dwelling house between the northernmost part of the site and the regional road.
- 1.3. The stated site area is 1.2 hectares. The defined site includes the infill location where new houses are to be constructed and the public roads and the open spaces associated with the housing estate.
- 1.4. Photographs of the site and surrounding area which were taken by me at the time of my inspection are attached.

2.0 Proposed Development

- 2.1. Permission as per the original application was for the development of 19 no. houses in blocks of terraced houses.
- 2.2. In accordance with the revised submission received by the planning authority on the 6th of March 2019 the development was **reduced to 17no. dwelling houses**. Blocks 1-3 would be aligned north-west to south-east and comprise 10 no. houses and Block 4 would be aligned largely north to south. Block 4 is incorrectly marked as units 12-17 (6 no. houses) – in fact the revised site layout shows 7 no. houses at Block 4.

- 2.3. All houses are two-storey terraced houses. There are 8 no. three bedroom units proposed and 9 no. two bedroom units.
- 2.4. The revised drawings received on the 6th of March 2019 include site sections which were refined by the submission received on the 4th of April to incorporate a detail of section A-A which includes the existing bungalow to the north.
- 2.5. The stated 'entire development site area is 27,100 sqm'. That would give rise to a requirement for 4,065 sqm of open space based on 15% of the open space. The area of open space which is to be provided is 4,603 sqm.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to conditions including:
 - Development to be in accordance with plans particularly the revised site layout received on 6th of March 2019.
 - Permission is granted for 9 no. two-storey 2 bedroom terraced houses and 8 no. two-storey 3 bedroom terraced house (17 no. in all).
 - Use of houses as permanent homes only and not for the purposes of holiday homes unless authorised by a separate grant of permission. Holiday homes as defined exclude second homes, which are occupied on an intermittent basis by returning emigrants.
 - Upgrading of existing junction to be in accordance with access layout plans received on 4th of April 2019. These plans to be revised to a scale of not less than 1:100 and 1:500 and the development to be carried out strictly in accordance with such plans.
 - Details of open space and gardens specified and to be subject of further agreement.
 - Details of individual plot entrances.
 - Prior to occupation of dwellings the existing footpath at the site frontage to be resurfaced/refurbished.

- Traffic, demolition and construction management plan to be agreed as detailed.
- Requirements relating to surface water, electrical and telephone services, external finishes, hours of construction as specified.
- Plot boundaries to side and rear of each house to be 2 m high close board treated timber fencing.
- Requirements relating to lighting, part M, water supply, waste water and provision and maintenance of common services.
- Certification that infrastructural services have been completed to required standards. This will include a written report prior to which a recommended bond shall not be released.
- Contribution in accordance with development contribution scheme.

3.2. Planning Authority Reports

3.2.1. Planner's report

The final planner's report dated 13th of May 2019 includes the following comments:

- The revised layout provided for a reduction in house numbers from 19 to 17. In addition a report in support of the amendments was received on 6th March 2019.
- Further details received on the 4th of April 2019 including :
 - Revised public notices.
 - The agreed optimum upgrade to the junction of the estate road and the regional road.
 - Proposals to replace an existing retaining wall and entrance wing wall with a new 3m high retaining wall, together with a proposal to enclose the rear gardens of the new houses with 2m high close board timber fence atop.
 - Relevant evidence of third party consent.

- Principle of development is acceptable. Notes the location of the site within the settlement, the nature and scale of the development and the policies of the development plan. No requirement for Part V given the absence of zoned lands in Milford.
- Development responds to site constraints. Not reasonable or appropriate to seek compliance with all requirements of development plan design / layout requirements. Notes the low density nature of scheme (14 houses per hectare).
- Development would not injure the amenities of the area, be prejudicial to public health or endanger public safety by reason of traffic hazard.
- Proposed condition relating to construction, demolition and traffic management plan is particularly important in this case.
- Notes that permission was granted in mid-2017 to Irish Water for the upgrade of the wastewater treatment plant in Milford and that work is progressing on the future Ramelton / Milford / Rathmullan Sewerage Scheme.
- Visibility splays of 90m are achievable in both directions at the junction with regional road and the planned upgrade of that junction is agreeable to Council engineers.
- Permission should be granted.

3.2.2. Other Technical Reports

Fire Service Section – no objection – requirement for adequate water supply.

Roads Section – report of 2nd of January 2019 notes poor vision lines at junction with regional road. Road resurfacing will be required.

Road Design Section – report of 4th January 2019 notes the poor sightlines at access/egress for dwellings 1 and 2 of block 1, which needs to be reviewed as the access is skewed and sightlines insufficient. Installation of a right turn lane as required under the previous application has not been undertaken but there would be limited space and it may be more suitable to request that the nearby passing lane be formalised allowing for traffic to be accommodated during times of peak flow.

3.2.3. **Prescribed Bodies**

No comments.

3.2.4. **Third Party Observations**

3.2.5. The letters of objection raise issues relating to :

- The unfinished nature of the estate.
- The lack of a right hand turning lane in to the estate.
- Inadequate parking in an area where there is overspill from the church.
- The fact that vehicles have to reverse from the driveways onto the main access road on a blind corner – this is particularly relevant to block 1.
- Inadequate wastewater treatment.
- House design, which is out of character and for which there may not be a market.
- Inadequate open space, which will result in children playing in front of houses on a hill, which would not be safe. Overdevelopment.
- Level of social housing in estate would be disproportionate.
- Property devaluation.
- Overlooking and loss of privacy to existing houses.
- Fencing and the estate remains unsafe and the opening to the area at the rear of the estate remains dangerous. Lighting has been fixed but we are concerned about maintenance in the longer term.
- Concerns relating to duration of construction and to stability of retaining wall at north-eastern site boundary.

4.0 **Planning History**

4.1.1. Under planning reg. ref. 06/50265 permission was granted for a development comprising 58 no. houses. The original application received on 10th March 2006 was described as relating to 64 no. houses on the overall site area of 2.842 hectares.

- 4.1.2. The revised submission received by the planning authority on 08/06/2006 was described as comprising 58 dwellinghouses:
- 10 no. one and a half storey semi-detached
 - 16 no. two storey town houses
 - 32 no. two storey semi-detached houses
 - All associated site works.
- 4.1.3. Permission was granted subject to conditions including:
- Requirement for installation of primary treatment system prior to final discharge to Milford town sewer (condition 1b).
 - Details of a water storage facility to be provided to be agreed (condition 1c).
 - Other standard conditions relating to engineering details and construction phase requirements.
 - Details regarding the primary sewage treatment system installation, operation and maintenance (condition 15).
 - Bond or other financial security in sum of €2,650 per house.
 - Financial contribution under Scheme.
- 4.1.4. Amongst the correspondence on the full planning history which is on file is a proposed scheme for the site subject of the current application. The development is described in the letter from the then prospective applicant as comprising 18 no. three bedroom town houses. The feedback from the planning authority by phone was negative and the development described as over-development. The proposal was subsequently reduced to 16 no. houses on the 0.46 hectare site – no application was made in relation to either proposal.
- 4.1.5. The planning history includes two applications for apartments at the site of the current application under planning reg. ref. 08/50508 and planning reg. ref. 08/50525. The applications were not concluded – the planning report on the current application files states that they were invalid.
- 4.1.6. Under planning reg. ref. 17/50462 permission was granted for an interim upgrade to Milford wastewater treatment plant described as the Milford Sewerage Scheme. It

involves inlet works, pumping station and storm water infrastructure works. The proposed development would improve the secondary stage treatment and minimise overflows to the existing discharge (at Maggys Burn watercourse, to the south). Ultimately the plan is that the discharge to Maggys Burn is to be discontinued under the larger RMR scheme in preparation which will provide one treatment plant for three towns and a new discharge location. The application submissions include a Stage 1 appropriate assessment screening report.

5.0 Policy Context

5.1. National policy

5.1.1. Guidelines for Sustainable Residential Development in Urban Areas 2009

5.1.2. Chapter 6 of this document refers to small towns and villages under 5,000 population. The general advice is that development should be plan led and should in terms of scale be proportionate to the pattern and grain of existing development. Section 6.12 refers to sites at the edge of small towns / villages where densities of less than 15-20 dwellings per hectare may be considered in order to provide alternatives to urban generated housing. The density requirement for small villages and towns would be above 20 and in general would be 35 units per hectare.

5.2. Development Plan

Under the provisions of the Donegal County Development Plan 2018-2024 the following are relevant.

Milford is identified as a Layer 3 Settlement – Rural Town and Open Countryside.

Policies relating to Urban Housing refer to a range of matters including:

- To be in accordance with best practice national guidance in respect of design process, layout and specifications.
- Appropriate housing density taking into account the context and the core strategy – UB-P-10 refers.
- Protection and provision of residential amenity.

5.3. Natural Heritage Designations

There are a number of European sites within 15km of the site of the proposed development including:

Lough Fern SPA, which is a few kilometers to the south (features of interest include pochard and wetland and waterbirds).

Lough Swilly SPA to the east (features of interest include wintering birds)

Lough Swilly SAC (features of interest include estuaries, coastal habitats, otter and old sessile oak woods).

River Leannan SAC (features of interest are lowland oligotrophic lakes and for Annex 2 species including freshwater pearl mussel, Atlantic salmon and *Najas flexilis*, a submerged plant found in freshwater lakes). Lough Fern is part of this SAC, which discharges to Lough Swilly.

Mulroy Bay SAC, a few kilometers to the (features of interest – include reefs, otter and large shallow inlets and bays)

Derryveagh And Glendowan Mountains SPA to the west (features of interest include red-throated diver, merlin, peregrine, golden plover and dunlin).

Cloghernagore Bog and Glenveagh National Park SAC to the west (features of interest include habitats and species).

Sheephaven SAC to the north-west (features of interest include coastal and other habitats and plant species).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The main issues in the appeal which has been lodged by residents of Lough Fern Heights are:

- Entrance unsuitable due to sharp bend and blind spot and failure to put in place right hand turning lane.
- Inadequate sewage facilities.

- Proposed houses are not in keeping with existing development.
- Health and safety concerns due to unfinished estate.
- Lack of communal open space.
- In addition to this we raise issues relating to the former developer to the estate and the applicant and whether are connections. In the circumstance of at least 25% of the estate being under lease as social housing, we have a concern that the current application will also be used for social housing if approved which would result in 50% provision of social housing in the estate.
- The attached letter of objection raises issues relating to the unfinished estate, inadequate wastewater treatment, inadequate parking in an area where there is overspill from the church, house design and level of social housing.

6.2. Applicant Response

The first party response includes the following comments:

- The site is within Milford (population 1037), which contains a range of services and facilities.
- 44 no. of the previously permitted 58 units were built. The decision of the planning authority to grant permission for 17 units would replace the previously permitted 12 no. units.
- The population envisaged by 2024 is 5029, necessitating 1863 housing units.
- The appeal while raising other grounds is mainly an attempt to delay permission for development of social housing and it is vexatious and should be dismissed.
- There is no traffic hazard at the first bend and two houses have been removed to reduce level of ground at that location where low growing shrubs will be positioned. The bend on the estate road does not constitute a hazard.
- There was no requirement under the parent permission for a right turning lane, but this will be implemented under condition 4 of the decision of the planning authority in accordance with the applicant's proposals.

- There is adequate sewage infrastructure which the planning authority accepts.
- The estate is fully compliant and was inspected in this regard by the Council in 2010 prior to leasing houses for social housing.
- The provision of 4,065m² open space exceeds standards.
- The Rebuilding Ireland Action Plan sets the objective of providing social housing. This issue is immaterial to this appeal.

6.3. **Planning Authority Response**

- 6.3.1. The planning authority relies on the planner's report on file and has no further comments.

6.4. **Observations**

- 6.4.1. None.

6.5. **Further Responses**

None.

7.0 **Assessment**

- 7.1.1. Following inspection of the site and consideration of the documentation on file including the planning history as well as the prevailing national and other policy objectives I consider that the following are the main issues in this case:

- Principle of development and suitability of density.
- Access and parking.
- Open space and overlooking.
- Other issues.
- Environmental impact Assessment.
- Appropriate Assessment.

7.2. Principle of development and suitability of density.

- 7.2.1. I consider that the principle of development of this site for residential use is established and in this regard I refer to:
- The location of the site within the designated settlement of Milford wherein there is an objective to increase the population and provide housing.
 - The infill nature of the site within a housing estate, where roads, footpaths, lighting and open space are in place.
 - The planning history which includes permission for two-storey housing at this part of the site.
- 7.2.2. At a high level it is clear that the population increase of 5,029 envisaged by 2024 for the Layer 3 settlements (small towns and their hinterlands) appears to be ambitious and the applicant indicates that the current population is little over 1,000. In principle the development plan supports housing development in this area which is a designated Layer 3 settlement.
- 7.2.3. The density of the proposed development at 17 units on a site of 1.2 hectares (that is 14 units per hectare) is below the objective of 20-35 unit per hectare for edge of small town/village centre sites as set out in the Guidelines for Sustainable Residential Development in Urban Areas. The Guidelines also however make allowances for lower densities at sites at the edge of small towns and villages but this appears to be directed towards providing alternatives to balance drivers for urban generated housing proposals in rural areas.
- 7.2.4. The development plan standards include the achievement of an appropriate density. While there is no specified density set under the development plan there is reference to adherence to the national guidance, albeit largely in relation to layout and other criteria. Policy UB-P-10 refers to achievement of a housing density which is appropriate to its context and also refers to the requirements of the core strategy.
- 7.2.5. The relaxation of requirements for higher densities which is given under the Guidelines is not of particular relevance to this development as it appears to be aimed at serviced-sites types of proposals. However, the density of 14 units per hectare is fairly close to at the lower end of the normal requirement of 20 units per hectare. In my opinion when the topography and the elongated nature of the site are

taken into account together with the location of the site at the front of a housing estate of similarly low density, the proposed might not be deemed to be so out of keeping with the standards for small towns as to warrant a refusal of permission.

- 7.2.6. In addition I refer to the planning history, which is described above and which includes a grant of permission for 58 units at the overall site. The proposed development of 17 units together with the existing 44 no. units would result in an overall density for the estate of 21.5 hectares on a site of 2.842, which would be acceptable under the Guidance.
- 7.2.7. I also note that the applicant has reduced the number of housing units from 19 no. to 17no. houses, for reasons relating to traffic sightlines, which I discuss below. In addition, the proposal would result in more units than previously permitted at the site. I conclude that the development is acceptable in principle and in terms of its density.

7.3. Access and parking

- 7.3.1. While the estate road which will serve the proposed development is largely in place, there are a number of matters which have been raised in the application and are relevant to the appeal.
- 7.3.2. Regarding the regional road junction with the estate road, the proposals which were presented to the planning authority for consideration were described by the Council's Roads Engineer as a 'workable solution' and the best option that can be obtained within the restrictions of the location. The junction sightlines at the estate entrance of 90m is to standard and at the regional road there is sufficient space for a single car to wait for a gap in traffic to turn into the estate, while there is also sufficient room for vehicles on the regional road to pass in both directions. The proposal does not set out a full right-turn lane, which objectors still consider to be the best solution. However, to provide a right – in turning lane would require a revised road layout resulting in space for egressing vehicles being pushed further into the estate, resulting in the 90m sightlines being reduced. I agree with the conclusion drawn by the planning authority officials that the applicant's revised proposal constitutes the best available option in the circumstances and I consider that it is acceptable in traffic safety terms and would not lead to congestion on the main road.

- 7.3.3. Regarding the traffic circulation within the estate the removal of houses from block 1 has increased visibility of vehicles manoeuvring from houses and provides for better stopping distance. The pocket of open space, which will be in place instead of the original houses and boundary walls thus significantly enhances traffic safety at this entry point to the housing development. Regarding objector's concerns relating to the maintenance of the planting at this location, I consider that the matter can be addressed in part through the agreement of the type of planting proposed at this location, which would be a matter for the planning authority.
- 7.3.4. Regarding the completion of a footpath at the frontage of the site this is presented as part of the application proposals.
- 7.3.5. I note the recommendation of one of the officials of the Council regarding roads reinstatement / resurfacing which would be appropriate to be addressed by condition.
- 7.3.6. Adequate parking provision is to be provided to serve the proposed houses.
- 7.3.7. I am satisfied that the development proposed is acceptable in terms of roads and traffic issues and that it does not constitute a traffic hazard.

7.4. Open space, landscaping and maintenance

7.4.1. Public open space

- 7.4.2. The proposed development provides for a new pocket play area between the two housing blocks, which I consider will constitute an amenity space of some value to the residents of the new houses. In particular the open space would be suitable for use by young children to access given that it is close to the houses it would serve. In the wider residential area in the immediate environs are two other larger areas.
- 7.4.3. The small open space adjacent the estate road is not envisaged as having any functional value other than to serve enhance the sightlines for residents, particularly those close to the sharp bend in the estate road, as discussed above.
- 7.4.4. I consider that there is adequate provision for public open space within the development and the applicant has shown that the normal development plan requirement of 15% of the overall housing development lands of Lough Fern Heights will be provided.

7.4.5. The planning authority recommendation in condition 5(a) to (f) sets out a range of detailed requirements in relation to open space and related matters and I summarise these matters as relating to:

- Detail of the land drainage and grading and provision of suitable equipment and furniture.
- Enlarged plot arrangements for each front garden to be detailed as well as mews pedestrian access to each rear garden together with landscaping, planting and all from boundaries.
- All boundary treatments to be detailed.

7.4.6. I am satisfied that these measures would ensure that the development is suitably carried out and can be properly maintained. However, I consider that the detail is best left to the agreement of the planning authority and recommend a standard landscaping condition.

7.4.7. Regarding the retaining wall at the northern end of the site, which requires reconstruction, it is relevant to note the agreement of the relevant party has been obtained and that it will be set back from the lane and topped by rear garden boundary features, specifically 2m high close board tanalised fencing. I recommend that the Board uphold the condition of the planning authority on this matter. That condition requires that the drawings and specifications for the proposed retaining wall supported by design calculations prepared by suitably qualified structural engineer be detailed.

7.4.8. **Private open space**

7.4.9. A critical matter of concern in terms of the future residential amenity of the occupants of the houses is the detail of the relationship of the rear gardens with the houses which will be served. On a sloping site as proposed I would also consider that the detail of any slopes within the gardens overall is of significance. The planning authority addressed this matter during the application and the section drawings received show that it is proposed to bring the soil level up behind the retaining wall and level with the finished floor levels of the houses in general. This has been detailed in the 6 no. site section drawings provided.

7.4.10. I note that the gardens vary in size (up to 208 sqm) and that while many are in or around the minimum sizes there are many also, which would be 100 sqm. I am satisfied that the proposals for rear gardens, all of which are over 48 square metres in area is acceptable and will provide for the amenity needs of future occupants.

7.4.11. **Maintenance**

7.4.12. While third parties have raised concerns in relation to the future maintenance of the proposed development, I do not share those concerns. The taking in charge of the housing development will be a requirement. In addition it is also of some relevance that there is substantial investment by the Council in the estate as a number of houses are occupied as social housing.

7.5. **Other issues**

7.5.1. As identified in the planner's report there is no requirement for a condition relating to the provision of social housing in the context of this development being on lands which are not zoned.

7.5.2. Regarding the comments made by objectors that the proposed houses will be taken by the Council and leased as social housing, I consider that the future tenure of the houses is not in this respect relevant to the decision of the Board. Similarly I note that the place of origin of the developer, which has been raised in objections is entirely irrelevant.

7.5.3. Regarding the construction phase impacts on the amenities of the area and the future disposal of any wastes, these matters would all be addressed under a construction management plan to be agreed with the planning authority. Any concerns relating to hours of operation and potential for dust / noise impacts would be addressed in that plan.

7.5.4. Regarding the availability of suitable wastewater treatment infrastructure to serve the proposed development, the planning report on file notes that permission was granted in mid-2017 to Irish Water for the upgrade of the wastewater treatment plant in Milford and that work is progressing on the future Ramelton / Milford / Rathmullan Sewerage Scheme. Details of the larger scheme are on Irish Water's website, which refers to the existing plant at Milford as underperforming. The larger scheme will

bring together all three towns and provide treatment for discharges from Ramelton and Rathmullan (for the first time) and improve the situation at Milford where there is a plant, which is substandard. Information on the Irish Water website also indicates that upgrades of sewers is underway in Milford and the Project 2040 website shows a completion date for the overall project of 2020. While it is not clear to me that the larger project is on target to meet that timeline, I am satisfied that the project is a priority for Irish Water. In this context I do not consider that a grant of permission would be manifestly contrary to the proper planning and sustainable development of the area.

- 7.5.5. The supply of water will be agreed with Irish Water and there is no evidence of any supply deficiency and no need for connection agreements to be obtained prior to a decision on this appeal.

7.6. Appropriate assessment

- 7.6.1. The application has not been accompanied by a Screening report or a Natura Impact Statement and none of the reports of the planning authority provide any detailed information regarding the matter of appropriate assessment. The planner's report refers to the location of the site outside of and removed from any sensitive designations and to the nature and scale of the development.

- 7.6.2. There are a number of European sites within 15km of the site of the proposed development including:

- Lough Fern SPA, which is a few kilometers to the south (features of interest include pochard and wetland and waterbirds).
- Mulroy Bay SAC, a few kilometers to the (features of interest – include reefs, otter and large shallow inlets and bays)
- Lough Swilly SPA to the east (features of interest include wintering birds)
- Lough Swilly SAC (features of interest include estuaries, coastal habitats, otter and old sessile oak woods.
- River Leannan SAC (features of interest are lowland oligotrophic lakes and for Annex 2 species including freshwater pearl mussel, Atlantic salmon and others). Lough Fern is part of it and it discharges to Lough Swilly.

- Derryveagh and Glendowan Mountains SPA to the west (features of interest include red-throated diver, merlin, peregrine, golden plover and dunlin).
- Cloghernagore Bog and Glenveagh National Park SAC to the west (features of interest include habitats and species).
- Sheephaven SAC to the north-west (features of interest include coastal and other habitats and plant species).

7.6.3. I consider that the only potential impact pathway of relevance is related to water quality. Therefore, I consider that all of the following sites can be excluded from further consideration on the basis that there is no pathway of relevance (and having regard to the qualifying interests of the European sites) between the proposed development site and the European site

- Mulroy Bay SAC, a few kilometers to the north (features of interest – include reefs, otter and large shallow inlets and bays).
- Derryveagh and Glendowan Mountains SPA to the west (features of interest include red-throated diver, merlin, peregrine, golden plover and dunlin).
- Cloghernagore Bog and Glenveagh National Park SAC to the west (features of interest include habitats and species).
- Sheephaven SAC.

7.6.4. The following European sites are all hydrologically connected to the site by way of the wastewater treatment plant at Milford to which the proposed development would connect:

- Lough Fern SPA, which is a few kilometers to the south (features of interest include pochard and wetland and waterbirds).
- River Leannan SAC, which includes Lough Fern and which discharges to Lough Swilly. Features of interest are lowland oligotrophic lakes and for Annex 2 species including freshwater pearl mussel, Atlantic salmon and *Najas flexilis*. The latter species is a submerged macrophyte found in 52 Irish freshwater lakes, which is susceptible to eutrophication, is found in Lough Fern and is in inadequate conservation status for this European site.

- Lough Swilly SPA to the east (features of interest include wintering birds).
- Lough Swilly SAC (features of interest include estuaries, coastal habitats, otter and old sessile oak woods).

7.6.5. The AA screening report which is in the public realm as part of the planning history of the proposed upgrade of the Milford Sewerage upgrade application indicates that treated effluent from the plant flows into Maggys Burn, a small salmonid stream and from there into Lough Fern SPA at a distance of 2.2km downstream. Lough Fern is part of the River Leannan SAC, which in turn discharges to Lough Swilly. I consider that there is potential for indirect impacts on birds and for direct impacts on some plant species and habitats.

7.6.6. There is considerable evidence in the public realm notably on the EPA website particularly the annual reports on the discharge licence. The plant is not meeting emission limit values and is affecting water quality. Work undertaken on the main element of the secondary treatment process (an oxygenation ditch) is recorded in these reports but there remained in 2018 problems with stormwater overflow and exceedances of ammonia levels, which would be of relevance in terms of potential eutrophication impacting downstream habitats. On completion the Milford Sewerage Scheme will result in reduction of unscreened storm overflows thus improving the water quality in Maggys Burn and therefore having a positive impact on the downstream European sites.

7.6.7. The issue for the Board concerns the potential additional water quality impact as a result of a permission for 17 houses. In terms of the scale of the development it might be considered that it is not significant in terms of the additional loading onto the Milford wastewater treatment plant, which has a population equivalent of about 950 according to the EPA website. Therefore even pending the implementation of the works to upgrade the existing plant including through addressing storm overflows, it might be determined that the additional effluent loading onto the plant would give rise to an effect on the qualifying interests of the European sites, which could be described as imperceptible. It would also be practical to note that while the discharge affects Maggys Burn, the conditions in the receiving waters which flow to Fern Lough are likely to be steadily improving since the works undertaken on behalf of Irish Water in 2017 and by the permitted upgrade to the plant. As such a grant of

permission might be considered and a conclusion drawn that there is no requirement for submission of more information.

- 7.6.8. However, the requirements for appropriate assessment are onerous and legalistic and are required to be followed by the Board in the making of decisions. I do not consider that it may be concluded that there would be no significant effects on the European sites to which the plant is hydrologically connected. In particular I consider that the impact of the additional loading on the wastewater treatment system and its impact on Lough Fern SPA and River Leanne SAC cannot be ruled out based on the information available. In this circumstance I do not consider that it is open to the Board to grant permission.
- 7.6.9. The Board should note that if it decides to refuse permission along the lines recommended below, this might be deemed to constitute a 'new issue' in this case, notwithstanding the raising in the appeal of concerns relating to wastewater treatment capacity. The Board is also advised that the application has not been referred by the planning authority to any prescribed bodies and neither has the Board has not undertaken such referrals.

8.0 Recommendation

- 8.1. I recommend that permission be refused for the reasons and considerations below.

9.0 Reasons and Considerations

On the basis of the information provided with the application and the appeal, including a lack of information relating to implementation of the permitted Milford Sewerage Scheme Wastewater and the water quality impacts which it will secure and in the absence of an Appropriate Assessment Screening Report and, if necessary, a Natura Impact Statement the Board cannot be satisfied that the proposed development, individually, or in combination with other plans or projects would not be likely to have a significant effect on European sites particularly River Leannan SAC and Fern Lough SPA in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting permissions.

Mairead Kenny
Senior Planning Inspector

29th October 2019