



An
Bord
Pleanála

Addendum 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 Background

This appeal relates to an infill development site in a residential estate. In accordance with the revised submission received by the planning authority on the 6th of March 2019 the development was reduced to 17no. dwellinghouses.

My report of the 29th of October 2019 refers. Having regard to the proposals for wastewater treatment and potential water quality impacts on European sites I recommended that permission be refused. The Board's Direction is described below.

The planning authority reports note that permission was granted in mid-2017 to Irish Water for the upgrade of the wastewater treatment plant in Milford. Work is progressing on the future Ramelton / Milford / Rathmullan Sewerage Scheme.

As noted in my earlier report the application has not been referred by the planning authority or the Board to any prescribed bodies.

2.0 Board Direction

The Board decided on 15th of November 2019 to issue a section 137 notice to all parties to the appeal as follows:

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 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 might not be satisfied that the proposed development, individually or in combination with other plans or projects might or might 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 might be precluded from granting permission.

3.0 Applicant's submission

The applicant submitted a document entitled Screening Report for Appropriate Assessment. This was in relation to the proposed development of 17 no. houses as detailed under planning ref. 18/51805 and was dated December 2019.

The report notes conditions 8(a), 9 and condition 17 of the decision of the planning authority. These relate to traffic, demolition and construction management plan (condition 8(a)), that no water from the site be permitted to discharge to the public road (condition 9) and that wastewater shall discharge to the public sewer (condition 17).

The screening report notes that the required construction management plan will outline the use of an attenuation pond on site to ensure that untreated water carrying a heavy sediment loading is not allowed to flow off site during the construction phase. Appendix 2 which was prepared by a hydrologist outlines the background and arrangements for a suitable attenuation pond and details the requirement for 24-hour residence storage. This report notes that as the discharge rates for pre-and post-development are broadly similar the proposed development does not significantly increase flood risk or pressure on existing surface water drainage. It also notes that run-off from the site appears to flow to Maggy's Burn via a culvert before the WWTP. Post construction all domestic water including sewage will discharge to the existing WWTP. Stormwater will continue to discharge to Maggy's Burn through a culvert.

The report is based on water quality information at the individual water body which was accessed from the internet on the 30th of December 2019 and on grab samples. Baseline conditions including water quality issues in Maggy's Burn are described.

4.0 Other correspondence

4.1. Sandra Streete and others

The response dated the 6th of December 2019 states that the existing WWTP is not adequate and that upgrade plans have not yet been implemented. It is stated that the treatment plant regularly overflows into a salmonoid River which flows to Lough

Fern SPA and from there to the River Leannan, a habitat for freshwater pearl mussel. We wish to see an improvement in water quality not a deterioration.

4.2. **Planning authority**

The planning authority submission dated the 11th of December 2019 noted the conclusion of the AA Screening Report. A submission dated the 6th of January 2020 indicated no further substantive comments.

5.0 **Policy Context**

5.1. **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 Appropriate assessment

6.1. Introduction

6.1.1. The Screening for Appropriate Assessment received by the Board on the 6th of January 2020 refers. It is submitted in the report that having regard to the potential ecological impacts through source receptor pathway connectivity (e.g. hydrological link) and given the nature of the project a 10 km radius would be deemed to be the zone of influence of relevance. I accept the 10km radius in this instance for the reasons presented. The location of these sites is shown on map 2 of the document.

6.2. Potential Impacts, Sources and Pathways

6.2.1. From a review of the nature of the proposed development and the location of the subject site relative to European sites, and the AA Screening Report the following potential impacts are relevant:

- Potential for uncontrolled run-off during site clearance and construction which could enter Maggy's Burn 170 m from the site and then flow 2.4 km to the south-west to Lough Fern.
- Impacts related to the discharge of wastewater and storm run-off post development, which will connect to the wastewater treatment plant which in turn discharges to Maggy's Burn which flows for 2.2 km south-west to Lough Fern.
- The potential for in combination effects with other permitted or proposed plans or projects.

6.3. European Sites Potentially Impacted by the Proposed Development

6.3.1. Within the adopted 10km radius of the site are the following European sites:

- Lough Fern SPA (Site Code 004060) which is 1.5km to the south-west.
- Mulroy Bay SAC (Site Code 002157) which is 1.6km to the north.
- Lough Swilly SPA (Site Code 004075) which is 6.3km to the east.
- Lough Swilly SAC (Site Code 002287) which is 6.3km to the east.
- River Leannan SAC (Site Code 002176) which is 1.4 km to the south-west. Lough Fern is part of it and it discharges to Lough Swilly.

- Cloghernagore Bog and Glenveagh National Park SAC (Site Code 002047) which is 7.7 km to the west.
- Derryveagh and Glendowan Mountains SPA (Site Code 004039) which is 9.2 km to the west.

6.3.2. The AA Screening Report notes that there is a lack of pathway to the following European sites:

- Mulroy Bay SAC.
- Derryveagh and Glendowan Mountains SPA.
- Cloghernagore Bog and Glenveagh National Park SAC.

These sites can therefore be excluded from further consideration.

6.3.3. There is a hydrological link to the following sites:

- Lough Swilly SPA.
- Lough Swilly SAC.

The AA Screening Report notes that due to the distance of 6.3km from the subject site any form of runoff would be insignificant. I agree with this conclusion. In the scale of the contributing catchment any contribution from the subject site would not be relevant. These sites can therefore be excluded from further consideration.

6.3.4. There is also a hydrological link to the following sites which are more proximate:

- Lough Fern SPA.
- River Leannan SAC, which includes Lough Fern and which discharges to Lough Swilly.

These two sites require further consideration.

6.4. **Conservation Objectives for Leannan River SAC and Lough Fern SPA**

6.4.1. The **Conservation Objectives** for the two sites are set out in section 5.3 of the AA Screening Report. This is to maintain and restore the favourable conservation condition of the Annex I habitats and the Annex II species for which the Natura 2000 sites have been selected as detailed.

6.4.2. Leannan River SAC

- freshwater pearl mussel
- Atlantic salmon
- otter
- slender naiad
- oligotrophic water containing very few minerals
- oligotrophic to mesotrophic standing waters.

6.4.3. Lough Fern SPA

- Pochard
- wetland and waterbirds.

6.5. Leannan River SAC - assessment

6.5.1. Table 6.1 of the AA Screening Report sets out a site description and screening matrix for the Leannan River SAC.

6.5.2. Regarding the qualifying interest **freshwater pearl mussel** it is noted that the species is sensitive to water pollution including sediment release. The general threats which are in the catchment include farming forestry and quarrying. Construction projects that can give rise to run off with a heavy sediment loading is a threat. Milford WWTP is not identified as a point source risk in the sub basin management plan. There is an indirect hydrological link from the site to the SAC. As described in Appendix 2 all run-off will be treated by way of an attenuation pond prior to discharge to the storm drainage system. Treated outflow from the wastewater treatment plant would be discharged to the WWTP which discharges to Maggy's Burn which flows to Lough Fern and into the Leannan River. Due to distance and the dilution factor which would render any form of run-off from the site to be insignificant the proposed development on all site works will not pose a threat to the qualifying interest. I agree with this conclusion and consider that freshwater pearl mussel can be discounted from further consideration.

6.5.3. Regarding **Atlantic salmon** water quality deterioration would be the main form of threat as well as mechanical disturbance to spawning grounds. Within the catchment

the main threats include farming, including the application of fertiliser or slurry, quarrying activities and mechanical disturbance of rivers and river beds. The Leannan River is a designated Salmonoid river. As described in Appendix 2 all run-off will be treated by way of an attenuation pond prior to discharge to the storm drainage system. Post construction all storm run-off and wastewater will be discharged to the WWTP. Due to distance and the dilution factor which would render any form of run-off from the site to be insignificant the proposed development on all site works will not pose a threat to the qualifying interest.

- 6.5.4. **Otter** is sensitive to changes in water quality which can affect foraging and removal of habitat. Local agricultural activity is the main threat to this qualifying interest. There is no suitable habitat in and around the subject site for this species. No evidence of otters was found along the banks of Maggy's Burn during survey. The habitat along the banks of Lough Fern will not be impacted. Therefore it may be concluded that the development will have no negative impact on otter and the qualifying interest can be screened out from further studies.
- 6.5.5. **Slender naiad** which is a qualifying interest of this SAC is found only at a distance of approximately 14.3 km from the proposed development. There is no hydrological link. The qualifying interest can be excluded from further consideration.
- 6.5.6. **Oligotrophic waters containing very few minerals of Sandy Plains** is sensitive to water pollution, change in water pH and water eutrophication. It is found at specified locations which are 16.2 km and 14.3 km from the proposed development. Due to distance as well as the absence of a hydrological link the qualifying interest can be discounted for further consideration.
- 6.5.7. The qualifying interest **oligotrophic to mesotrophic standing waters** is present at the same locations as above and for the same reasons this qualifying interest can be discounted from further consideration.

6.6. Lough Fern SPA - assessment

- 6.6.1. Table 6.2 of the AA Screening Report deals with Lough Fern SPA and provides a site description and screening matrix.
- 6.6.2. Pochard, tufted duck, common goldeneye and Whooper swan are all found in significant numbers relative to the national population and are dependent on

supporting habitats of lake and wetlands. Water quality impacts which could damage surface water or pollution of groundwater are listed as the main potential threats. The proposed development does not contain suitable habitat for these qualifying interests and none of them were observed during the site or surrounding environs on the day of visit. In view of this, the 2.4 km buffer between the site and the SPA and the conclusions drawn earlier in relation to surface water quality impacts on Maggy's Burn and downstream habitats, it may be concluded that the proposed project will not affect the habitat of Lough Fern where the species may forage during winter months. This qualifying interest can therefore be ruled out from further consideration.

- 6.6.3. Section 6.2 of the AA Screening Report sets out considerations relating to potential in combination effects. Amongst the considerations given to this matter in the report are comments from the EPA Inspector's report relating to a stage 2 appropriate assessment and the conclusion at the time that this qualifying interests were not considered to be under significant threat from the WWTP in 2011. I am satisfied based on the information available that there is no likelihood of significant effects arising in relation to in combination effects.

6.7. Conclusion

- 6.7.1. The issue for the Board concerns the potential additional water quality impact as a result of a permission for 17 houses. As I set out in my earlier report it might be concluded that given the limited 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. In that report I also noted that the requirements for appropriate assessment are onerous and legalistic and are required to be followed by the Board in the making of decisions. I have now taken on board the AA Screening Report submitted by the applicant. I agree with its approach, the suitability of the information provided and the conclusions drawn.
- 6.7.2. Having regard to the nature and scale of the development, to the proposed foul and surface water treatment measures, the nature of the receiving environment and distance to the nearest European sites, it is reasonable to conclude that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site in view of the sites'

conservation objectives and a Stage 2 Appropriate Assessment is therefore not required.

7.0 Conclusions

Following my inspection of the site, consideration of the submissions and the prevailing planning policy context I considered that the following may be concluded:

- The development is acceptable in terms of principle, design detail and density.
- The provision of open space is in excess of the development plan requirements.
- The junction details which have been considered in detail by the planning authority presents the best solution and a right turn lane at the main road is not appropriate.
- Proposals with respect to replacement of an existing retaining wall and related details which were received by the planning authority on the 4th of April 2019 are suitable.
- As noted by the planning authority there is no requirement for proposals under Part V of the Act as there are no zoned lands in Milford.
- I consider that the planning authority condition with respect to use as a holiday home is not necessary as such use would require planning permission.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the provisions of the Donegal County Development Plan 2018-2024, to the infill nature of the site and the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of

property in the vicinity and would be acceptable in terms of wastewater disposal and traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted to the planning authority on the 6th of March 2019 and the 4th of April 2019, and the further plans and particulars submitted to the Board on the 6th of January 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The permitted development shall be 17 houses in total comprising 9 no. two-storey two-bedroom terraced houses and 8 no. two-storey three-bedroom terraced houses.

Reason: In the interest of clarity.

3. Prior to the commencement of development the developer shall complete to the satisfaction of the planning authority the upgrade of the junction of the estate road and the public road in accordance with the plans and particulars received by the planning authority on the 4th of April 2019.

Reason: In the interest of traffic safety.

4. All areas of public open space shown on the lodged plans shall be reserved for such use and shall be levelled, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority.

Reason: In order to ensure the satisfactory development of the public open space areas and their continued use for this purpose.

5. Prior to commencement of development, the developer shall submit to the planning authority for written agreement, full design details of all landscaping including ground levels and boundary treatments, which shall be in accordance with the requirements of the planning authority.

Reason: In the interest of amenity.

6. As per condition of planning authority decision regarding retaining wall design.

Reason: To ensure an appropriate standard of development.

7. The footpath and internal road network serving the proposed development shall be in accordance with the detailed requirements of the planning authority for such works.

Reason: In the interest of amenities and public safety.

8. Public lighting shall be provided in accordance with a scheme, which shall include lighting along pedestrian routes through open spaces, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any house.

Reason: In the interest of amenity and public safety.

9. Prior to commencement of development, proposals for a house numbering scheme and associated signage shall be submitted to the planning authority for written agreement.

Reason: In the interest of orderly development.

10. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.

Reason: In the interest of orderly development and the visual amenities of the area.

11. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

12. Prior to commencement of construction of the houses, details of the materials, colours and textures of all the external finishes to the proposed houses shall be submitted to the planning authority for written agreement.

Reason: In the interest of orderly development and the visual amenities of the area.

13. Prior to commencement of development, a Construction Management Plan shall be submitted to the planning authority for written agreement. This plan shall provide details of intended construction practice for the development, including traffic management, hours of working, noise and dust management measures and off-site disposal of construction waste.

Reason: In the interest of amenities and public safety.

14. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the planning authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

15. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the

planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Mairead Kenny
Senior Planning Inspector

8th April 2020