



An  
Bord  
Pleanála

## Inspector's Report 307730-20

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| <b>Development</b>                  | Dwelling house with sewerage treatment system and domestic garage. |
| <b>Location</b>                     | Beefpark, Mountcharles, Co. Donegal                                |
| <b>Planning Authority</b>           | Donegal County Council   |
| <b>Planning Authority Reg. Ref.</b> | 2050626  |
| <b>Applicant(s)</b>                 | Aoife Dorrian  |
| <b>Type of Application</b>          | Permission   |
| <b>Planning Authority Decision</b>  | Grant Permission   |
| <b>Type of Appeal</b>               | Third Party v. Decision  |
| <b>Appellant(s)</b>                 | Daniel A Gallagher   |
| <b>Observer(s)</b>                  | None   |
| <b>Date of Site Inspection</b>      | 4 <sup>th</sup> December 2020                                      |
| <b>Inspector</b>                    | Louise Treacy  |

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 1.67 ha and is located approx. 4.5 km to the south-west of Donegal town and 1.5 km to the south-east of the town of Mountcharles at Beefpark, Co. Donegal. The site is located in a rural, coastal location and fronts directly onto Donegal Bay to the south. Access to the site is via the L-1885-1 local road, which extends from the N56 national primary route in a generally southern direction as far as Donegal Bay, with access thereafter via a private road which extends in an easterly direction from the L-1885-1 for approx. 440 m. The private road is narrow in width and includes a bridge structure towards its south-western end.
- 1.2. The application site is agricultural in nature, being characterised by grassland with clusters of rushes and mosses and mature scrub hedgerows. The site slopes noticeably from north to south, where it adjoins Donegal Bay. The site had been recently used to graze animals at the time of my inspection, with the ground being disturbed in places as a result, particularly towards the central / southern end. The southern end of the site was also significantly waterlogged, with the eastern/south-eastern portion being inaccessible due to the ground conditions. The northern end of the site was drier underfoot reflecting its sloped nature. A small stone structure (in ruins) is located towards the southern end of the site.
- 1.3. The site is bounded by 2 no. detached residential dwellings at its western and south-western boundaries, with sporadic one-off dwellings and agricultural land characterising the wider rural area.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the erection of a dwelling house with a sewerage treatment system and domestic garage.
- 2.2. The dwelling house is part single-storey, part-2-storeys in height and has a stated floor area of 285 m<sup>2</sup>. The domestic garage is a detached, single-storey structure with a stated floor area of 59.6 m<sup>2</sup>. The dwelling is positioned towards the upper portion of the site adjacent to the north-eastern boundary and is set-back from the southern site boundary with Donegal Bay by 93 m.

- 2.3. The proposed development also includes remedial works to the bridge structure located on the private laneway access route to the site (Drawing no. P-004 refers). This includes road build-up works and the installation of an upstand and safety barrier, to be agreed with the Roads Department of Donegal County Council.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. Notification of the Decision to Grant Permission subject to 12 no. conditions issued on 9<sup>th</sup> July 2020.
- 3.1.2. Condition no. 2 requires an occupancy clause of 7 years in compliance with the Rural Housing Policy of the development plan.
- 3.1.3. Condition no. 3 requires permanent visibility splays of 50 m to be provided in each direction at the location of the vehicular entrance.
- 3.1.4. Condition no. 8 requires that the southern end of the site be planted with at least 6 no. semi-mature broadleaf trees within the first planting season following the commencement of development.
- 3.1.5. Condition no. 11 requires all mitigation measures identified in the NIS to be implemented in full.
- 3.1.6. All other conditions are generally standard in nature.

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

##### **3.2.1. Planning Reports**

- 3.2.2. Basis of Planning Authority's decision.

##### **3.2.3. Other Technical Reports**

- 3.2.4. **Roads and Transportation:** No objection subject to conditions requiring remedial works to be undertaken to the bridge structure on the private access road.
- 3.2.5. **Environmental Health:** No objection subject to conditions.

### 3.3. **Prescribed Bodies**

- 3.3.1. **An Taisce:** Considers that the site is inappropriate for further one-off housing development due to its sloped nature, its proximity to Donegal Bay SAC/SPA and its designation for scenic amenity.
- 3.3.2. **The Heritage Council:** No response received.
- 3.3.3. **Dept. of Culture, Heritage and the Gaeltacht:** No response received.

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

- 3.4.1. 1 no. third party observation was made on this application by Danny Gallagher of Beefpark, Mountcharles, Co. Donegal. The points raised in the submission can be summarised as follows: (1) the applicant has insufficient legal interest in the site; (2) the applicant does not have a right-of-way over the laneway access to the site, with the right-of-way being restricted for agricultural purposes only; (3) insufficient clarity regarding the provision of services to the site; (4) the applicant is not entitled to carry out works to the bridge on the access laneway to the site.
- 3.4.2. The observation is accompanied by correspondence from Dunlevy & Barry solicitors which sets out details in relation to the ownership of the subject site and the right-of-way which exists over the private laneway.

## 4.0 **Planning History**

- 4.1. None.

## 5.0 **Policy and Context**

### 5.1. **National Planning Framework (NPF)**

- 5.1.1. In planning for the development of the countryside, the NPF acknowledges that there is a need to differentiate between demand for housing in areas under urban influence and elsewhere, as per the following objective:
- 5.1.2. **National Objective 19:** Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

## 5.2. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

5.2.1. The Guidelines confirm development plans should identify the location and extent of rural area types as identified in the NSS (now superseded by the NPF). These include: (i) **rural areas under strong urban influence** (close to large cities and towns, rapidly rising population, pressure for housing and infrastructure); (ii) **stronger rural areas** (stable population levels within a well-developed town and village structure and in the wider rural area; strong agricultural economic base and relatively low level of individual housing development activity); (iii) **structurally weaker rural areas** (persistent and significant population decline and weaker economic structure); and, (iv) **areas with clustered settlement patterns** (generally associated with counties of the western seaboard).

5.2.2. Development Plans must tailor policies that respond to the different housing requirements of urban and rural communities and the varying characteristics of rural areas.

## 5.3. Donegal County Development Plan 2018-2024

### 5.4. Rural Housing

5.4.1. The application site is located within a Stronger Rural Area, with such areas having a relatively stable population, within a well-developed town and village structure and in the wider rural area around them. This stability is supported by a traditionally strong agricultural economic base and the level of individual housing development activity in these areas tends to be relatively low and confined to certain areas.

#### 5.4.2. **Rural Housing Objectives**

- 5.4.3. **RH-O-1:** To distribute the projected need for housing units in the rural area in line with the Core Strategy.
- 5.4.4. **RH-O-2:** To support a balanced approach to rural areas to retain vibrancy and ensure the sustainability of established rural communities while having proper regard to environmental considerations
- 5.4.5. **RH-O-3:** To ensure that new residential development in rural areas provides for genuine rural need.
- 5.4.6. **RH-O-4:** To protect rural areas immediately outside towns from intensive levels of residential development and thus safeguard the potential for incremental growth of the towns and their potential beyond the plan period; to utilise existing physical and social infrastructure; and to avoid demand for the uneconomic provision of new infrastructure.
- 5.4.7. **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 of this Plan.

#### 5.5. **Rural Housing Policies**

- 5.5.1. **RH-P-1:** The following requirements apply to all proposals for rural housing:
  - (1) Proposals shall be subject to the application of Best Practice in relation to the siting, location and design of rural housing as set out in Appendix 4 and shall comply with Policy RH-P-2;
  - (2) Proposals shall be sited and designed in a manner that enables the development to assimilate into the receiving landscape and that is sensitive to the integrity and character of rural areas. Proposals shall also be located so as not to adversely impact on Natura 2000 sites or other designated habitats of conservation importance, prospects or views, including views covered by Policy NH-P-17;
  - (3) Any proposed dwelling, either by itself or cumulatively with other existing and/or approved development, shall not negatively impact on protected areas defined by the North Western International River Basin District Plan;

(4) Site access/egress shall be configured in a manner that does not constitute a hazard to road users or significantly scar the landscape, and shall have regard to Policy T-P15;

(5) Any proposal which does not connect to a public sewer or drain shall provide for the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health and accords with Environmental Protection Agency codes of practice;

(6) Proposals shall be subject to the flood risk management policies of the Plan;

(7) In the event of a grant of permission the Council will attach an Occupancy condition which may require the completion of a legal agreement under S47 of the Planning and Development Act 2000 (as amended).

5.5.2. **RH-P-2:** It is a policy of the Council to consider proposals for a new rural dwelling which meets a demonstrated need provided the development is of an appropriate quality design, integrates successfully into the landscape, and does not cause a detrimental change to, or further erode the rural character of the area. In considering the acceptability of a proposal the Council will be guided by the following considerations:

(1) A proposed dwelling shall avoid the creation or expansion of a suburban pattern of development in the rural area;

(2) A proposed dwelling shall not create or add to ribbon development;

(3) A proposed dwelling shall not result in a development which by its positioning, siting or location would be detrimental to the amenity of the area or of other rural dwellers or would constitute haphazard development;

(4) A proposed dwelling will be unacceptable where it is prominent in the landscape; and shall have regard to Policy T-P-15;

(5) A proposed new dwelling will be unacceptable where it fails to blend with the landform, existing trees or vegetation, buildings, slopes or other natural features which can help its integration. Proposals for development involving extensive or significant excavation or infilling will not normally be favourably considered nor will proposals that result in the removal of trees or wooded areas beyond that necessary to accommodate the development.

5.5.3. **RH-P-3 Stronger Rural Areas:** It is a policy of the Council to consider proposals from prospective applicants in need of housing within an area defined as Stronger Rural Area, provided they demonstrate that they can comply with all other relevant policies of this Plan, including RH-P-1 and RH-P2, where the applicant can demonstrate that they comply with one or more of the following:

- (1) Persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base;
- (2) 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);
- (3) Persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location.

This policy shall not apply where an individual has already had the benefit of a permission for a dwelling on another site, unless exceptional circumstances can be demonstrated. An exceptional circumstance would include, but would not be limited to, situations where the applicant has sold a previously permitted, constructed and occupied dwelling, to an individual who fulfils the bonafides requirements of that permission. New holiday home development will not be permitted in these areas.

5.5.4. A Rural Housing Location Siting and Design Guide is contained in Part B: Appendix 4 of the development plan.

## 5.6. **Landscape**

5.6.1. The upper portion of the site, which includes the proposed development, is designated as an Area of High Scenic Amenity (HSA). The central and lower portions of the site are designated as an Area of Especially High Scenic Amenity (EHSA).

5.6.2. Areas of High Scenic Amenity have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.



### 5.6.3. **Landscape Policies**

- 5.6.4. **NH-P-6:** It is a policy of the Council to protect areas identified as Especially High Scenic Amenity on Map 7.1.1: 'Scenic Amenity'. Within these areas, only developments assessed to be of strategic importance or developments that are provided for by policy elsewhere in this Plan shall be considered.
- 5.6.5. **NH-P-7:** Within areas of 'High Scenic Amenity' (HSC) and 'Moderate Scenic Amenity' (MSC) as identified on Map 7.1.1: 'Scenic Amenity', and subject to the other objectives and policies of this Plan, it is the policy of the Council to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape.
- 5.6.6. **NH-P-8:** It is the policy of the Council to safeguard the scenic context, cultural landscape significance, and recreational and environmental amenities of the County's coastline from inappropriate development.
- 5.6.7. **NH-P-9:** It is the policy of the Council to manage the local landscape and natural environment, including the seascape, by ensuring any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of the area.
- 5.6.8. **NH-P-13:** It is a policy of the Council to protect, conserve and manage landscapes having regard to the nature of the proposed development and the degree to which it can be accommodated into the receiving landscape. In this regard the proposal must be considered in the context of the landscape classifications, and views and prospects contained within this Plan and as illustrated on Map 7.1.1: 'Scenic Amenity'.

### 5.7. **Natural Heritage Designations**

- 5.7.1. There are 16 no. European sites located within 15 km of the subject site, including: Donegal Bay SPA (site code:004151); Durnesh Lough SPA (site code:004145); Lough Nillan Bog SPA (site code: 004110); Pettigo Plateau Nature Reserve SPA (site code: 004099); Dunragh Loughs/Pettigo Plateau SAC (site code: 0011125); Meenaguse/Ardbane Bog SAC (site code: 000172); Lough Nillan Bog (Carrickatlieve) SAC (site code: 000165); Ballintra SAC (site code: 000115); Tamur Bog SAC (site code: 001992); Lough Golagh and Breesy Hill SAC (site code:

002164); Meenaguse Scragh SAC (site code: 001880); River Finn SAC (site code: 002301); Durnesh Lough SAC (site code: 000138); Lough Eske and Ardnamona Wood SAC (site code: 000163); St. John's Point SAC (site code: 000191); and, Donegal Bay (Murvagh) SAC (site code: 000133).

5.7.2. The subject site is hydrologically linked to Donegal Bay SPA (site code: 004151) and Donegal Bay (Murvagh) SAC (site code: 000133).

## 5.8. EIA Screening

5.8.1. Having regard to the nature and scale of the proposed development, comprising 1 no. residential dwelling, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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 has been lodged by Daniel A. Gallagher of Beefpark, Mountcharles, Co. Donegal, which can be summarised as follows:

- The applicant does not have legal entitlement to pass over a bridge/culvert on the access road to the site and does not have legal authority or permission to carry out works on this structure;
- The current state and condition of the bridge/culvert would have health and safety implications for road users if planning permission was granted for the proposed development;
- The applicant is not the legal owner of the subject site, with insufficient documentary evidence provided with the application in relation to same;
- The applicant does not comply with the rural housing policy of Donegal County Council;
- No right of access to the subject site exists over the appellant's property.

## 6.2. Applicant's Response

6.2.1. A response was received from Harley Newman Planning Consultants on behalf of the applicant on 7<sup>th</sup> August 2020, which can be summarised as follows:

- The appeal submission is mainly concerned with legal issues outside of the remit of the Board, and as such, the appeal should be dismissed;
- The solicitor's letter which accompanied the application demonstrates that all consents and legal entitlements exist for access to the site and any necessary improvement works;
- The Board is entitled to grant permission for the development with reference to Section 34 (13) of the Act;
- The applicant has demonstrated a bona fide vital link and local connection to this area;
- The site is of such a large scale and relatively remote and screened from view, that the proposed dwelling would be comfortably assimilated into the receiving environment in keeping with development plan policies;
- The mitigation measures outlined in the NIS will be fully implemented by the applicant in the event planning permission is granted for the proposed development;
- The proposed development would not lead to any significant intensification of use of the access roadway that would lead to traffic safety concerns at this location;
- The drainage and environmental information submitted with the application demonstrate that the proposed development would pose no risk to the protection of the environment in this area;
- The NIS confirms that there would be no significant adverse effects on the integrity of any European sites as a result of the proposed development.
- The proposed development is fully in accordance with development plan provisions and the proper planning and sustainable development of the area and should be granted planning permission.

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

- 6.3.1. A response was received from the Planning Authority on 21<sup>st</sup> October 2020. The Planning Authority concurs with the response of Harley Newman Planning Consultants (applicant's agent) dated 6<sup>th</sup> August 2020 and has no further comments.

### 6.4. **Observations**

- 6.4.1. None.

### 6.5. **Further Responses**

- 6.5.1. A further response was received from the appellant on 27<sup>th</sup> October 2020. No new issues have been raised.

## 7.0 **Assessment**

- 7.1. I am satisfied that the main issues for consideration in this case include:

- Applicant's Legal Interest in the Subject Site
- Rural Housing Need
- Visual Impact
- Domestic Wastewater Treatment
- Appropriate Assessment

- 7.2. Each of these issues is addressed in turn below.

### 7.3. **Applicant's Legal Interest in the Subject Site**

- 7.3.1. The appellant has raised queries in relation to the applicant's entitlement to: (1) make this planning application; (2) utilise the private laneway which serves the subject site, including the undertaking of upgrading works to the bridge structure; and (3) provide services to facilitate the development. The appellant has submitted folio details which indicate that the site is not within the applicant's ownership.
- 7.3.2. The appellant further submits that he is the owner of the private laneway to the subject site and that the applicant is not entitled to undertake repair works to the existing bridge structure, or to use the laneway to access the proposed development. This position is supported by correspondence from Dunleavy & Barry Solicitors

which accompanied the appellant's submission to Donegal County Council and which states that: (1) the majority of the private laneway which facilitates access to the site is within the appellant's ownership; (2) a prescriptive right-of-way has been acquired over the laneway, which is restricted to an agricultural right-of-way only; (3) no individual may connect to any services passing over, above, under and along the appellant's property without their prior consent, as no easement by prescription exists for the benefit of the subject site over the appellant's property.

- 7.3.3. The planning application is accompanied by a letter from Sweeney McHugh Solicitors which confirms that a prescriptive right-of-way is in existence for the property along the subject laneway. The nature of the right-of-way is not clarified. It is further stated that the holder of the prescriptive easement is entitled to maintain the property to allow for the continued use of the property, including the carrying out of works required to ensure the right of way can be used safely. As such, it is submitted that the applicant would not require the permission of the relevant landowners to carry out such works. The applicant's agent further submits in the appeal response, that the original landowner (now deceased), was the stepfather of the applicant's mother and that the land is in the legal process of being transferred to the applicant's mother.
- 7.3.4. I note that a different landownership position was originally identified by way of Question 10 of the planning application form, which identifies the applicant as the site owner. The issue of landownership is discussed in Section 9.2 of the Planning Officer's Report, wherein it is stated that this matter was clarified by the applicant's agent, with the landowner status noted to be a typing error and the applicant being in the process of buying the site. I note that no documentary evidence is available on the planning file to support this position. Donegal County Council's Planning Officer considered that, over the course of the current planning application and the previous application on the site, the applicant had demonstrated sufficient legal interest to enable the Planning Authority to determine the application. The issue concerning the right-of-way over the laneway was noted to be outside of the scope of the Planning Acts.
- 7.3.5. In considering the foregoing, I note that the only recent planning history for the site relates to an application for a dwelling house which was subsequently withdrawn (Planning Authority Reg. Ref. 19/50556 refers). However, I further note that any

information which may have been submitted as part of an earlier application on the site, cannot be taken into consideration as part of the assessment of the current appeal case.

- 7.3.6. The Development Management Guidelines for Planning Authorities (2007) advise that where a third party raises doubts as to the sufficiency of an applicant's legal interest in a site, further information may have to be sought under Article 33 of the Planning and Development Regulations, 2001 (as amended). The Guidelines further advise that, only where it is clear from the response that the applicant does not have sufficient legal interest, should planning permission be refused. Further Information was not requested by the Planning Authority in this instance, and in my opinion, it appears that verbal clarification was sought regarding the applicant's interest in the site.
- 7.3.7. Having regard to the foregoing, I consider that the applicant has not demonstrated sufficient legal interest in the subject site to undertake the proposed development. In reaching this conclusion, I note that the applicant was originally identified as the landowner, but this was subsequently identified as being incorrect as highlighted in the Planning Officer's report. The applicant's appeal response sets out a different position, with the land noted to be in the process of being transferred to the applicant's mother, rather than the actual applicant.
- 7.3.8. I acknowledge the provisions 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 a permission under this section to carry out any development. However, in my opinion, given that it has been confirmed that the applicant is not the legal owner of the site, nor has a letter of consent been provided to make the application, I consider that the applicant has clearly not demonstrated sufficient legal interest in the site, and that planning permission should be refused on this basis.

#### **7.4. Rural Housing Need**

- 7.4.1. The application site is located in a Stronger Rural Area. Policy RH-P-3 of the Donegal County Development Plan 2018-2024 states, inter alia, that the Council will consider applications for housing in this area, where in addition to complying with all relevant policies of the plan, including RH-P-1 and RH-P-2, they can demonstrate compliance with one of the following: (1) persons employed in a rural-based activity

with a genuine need to live in the locality of same; (2) persons with a vital to the area by reason of having lived in the area for at least 7 years; or by the existence of long-established ties (min. 7 years) with immediate family members, or by reason of providing care to a person who is an existing resident (min. 7 years); (3) persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location.

- 7.4.2. The Supplementary Rural Housing Application Form states that the applicant currently resides at Laghey, Co. Donegal and has lived there for more than 7 years. It is also stated that the applicant's mother and grandmother are originally from Eddrim Glebe, Mountcharles, approx. 2 km from the subject site. A letter of support is included from Cllr. Noel Jordan of Donegal County Council.
- 7.4.3. In considering the foregoing, I note that the applicant currently resides approx. 13 km from the subject site in the village of Laghey, which is located to the south-east of Donegal town. While it is submitted that the applicant's mother and grandmother are originally from Eddrim Glebe, which is 2km from the subject site, I note that no documentary evidence has been provided in support of same, notwithstanding the letter of support from Cllr Jordan. As such, I consider that the applicant has not demonstrated a genuine need to live in this rural area and does not comply with policy RH-P-3 of the development plan. Therefore, I consider that planning permission should be refused on this basis.

## **7.5. Visual Impact of the Proposed Development**

- 7.5.1. The upper portion of the site, which includes the proposed development, is designated as an Area of High Scenic Amenity (HSA). The central and lower portions of the site are designated as an Area of Especially High Scenic Amenity (EHSA). I note that Donegal County Council's Planning Officer considered that the siting, design and scale of the proposed dwelling could be accommodated within the site and was considered to be acceptable in the rural area. The applicant's agent submits that the site is of such a large scale and relatively remote and screened from view, that the proposed development can be comfortably assimilated into the receiving environment in keeping with development plan policies.
- 7.5.2. In considering the visual impact of the proposed development, I note that Policy NH-P-7 of the development plan states that within areas of "High Scenic Amenity", it is

the policy of the Council to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape. In my opinion, the proposed breaking up of the building form, which is part single-storey and part 2-storeys in height, and which includes large glazing panels to the front elevation, would serve to reduce the visual impact of the development. I further consider that the existing tree planting to the front of the proposed dwelling and the proposed tree planting to the rear would assist in assimilating the development into the landscape. I agree with the applicant's agent that the site location is remote with limited public views, and as such, I consider that the proposed development would not be unduly visible at this location, notwithstanding the landscape designations which apply to the site.

## **7.6. Domestic Wastewater Treatment**

- 7.6.1. The relevant standard for domestic wastewater treatment is the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (2009). The applicant's Site Suitability Assessment Report records the underlying aquifer as locally important, with the groundwater having low vulnerability. The existing land use is described as grazing, with vegetation noted to include grass with some rushes. Ground conditions are described as generally firm, with some surface water ponding noted at the site entrance and in tracked areas, which generally reflects my own on-site observations. The groundwater protection response is R1, which indicates that an on-site system may be acceptable subject to normal good practice.
- 7.6.2. The trial hole results record a depth of 1.5 m from ground to the water table, with the topsoil characterised as silt/clay/loam between 0.1 – 0.3 m and silt/clay with some sands/gravels/aggregates below.
- 7.6.3. While 3 no. test holes were excavated for the purposes of the T-test, the Site Suitability Assessment Report notes that there was water from the pre-soaking/run-off from higher ground to the holes on the testing day, following severe rain. As such, the T-test was abandoned.
- 7.6.4. A P-test result of 62.29 was obtained, and as such, Table 6.3 of the EPA Code of Practice confirms that the site is suitable for a secondary treatment system with polishing filter at ground surface or over-ground. It is proposed to install a



mechanical aeration sewage treatment unit with soil polishing filter. The trench invert level is 0.5 m.

- 7.6.5. I note that the Environmental Health Officer of Donegal County Council had no objection to the proposed development, subject to 9 no. conditions requiring amendment to the proposed wastewater treatment arrangements. These include: (1) the requirement to drain the site to lower the water table and to intercept and divert all surface water run-off and seepage away from the percolation area; (2) the installation of land drains to control the on-site water table; (3) the addition of imported filling materials consisting of a mixture of 30% sand by volume and 70% topsoil; (4) the provision of a pump-fed soil polishing filter of at least 280 m<sup>2</sup> in area; and, (5) the construction of a land drain around the perimeter of the soil polishing filter, set back by at least 2 m to protect the area from surface water run-off from the higher ground on the site.
- 7.6.6. Having considered all of the foregoing, in my opinion, the subject site is fundamentally unsuitable to facilitate the efficient and sustainable treatment of wastewater. In reaching this conclusion, I note that the site was significantly waterlogged during the time of my inspection, particularly in the central/southern portions. I further note that the on-site vegetation, which includes rushes and mosses, indicate wet on-site ground conditions and poorly drained soil. I further note that the T-test had to be abandoned due to the test holes being filled with water.
- 7.6.7. The treatment of on-site wastewater is reliant on a heavily engineering system, which will require strict, ongoing maintenance. If this system is not suitably maintained, the inefficient treatment of wastewater on the site may arise, with the potential for impacts on the adjoining Natura 2000 sites (Donegal Bay SAC and SPA). Thus, based on the information submitted with the application and my own on-site observations, I am not satisfied that wastewater can be dealt with effectively on site, and as such, the proposed development would be prejudicial to public health. In my opinion, planning permission should be refused on this basis.

## **7.7. Appropriate Assessment (AA) Screening**

- 7.7.1. The subject site is hydrologically connected to Donegal Bay (Murvagh) SAC (site code: 00133), which adjoins the site boundary to the south, and Donegal Bay SPA

(site code: 004151), which also adjoins the southern site boundary at a set-back of between 0 – 8 m.

7.7.2. The proposed development has the potential to: (1) result in the deterioration of water quality downstream of the site, resulting in pollution from surface water run-off during site preparation and construction and during the operation of the development, via diffuse pollution from the WWTS; (2) disturbance to wildlife, wintering wildfowl and waterbirds during site preparation and construction, and the during the operation of the development; and (3) damage to adjacent habitats within the SAC and SPA through inappropriate site preparation and construction techniques. As such, the proposed development may have significant effects on Donegal Bay (Murvagh) SAC and Donegal Bay SPA, and therefore, the carrying out of an Appropriate Assessment of the proposed development is necessary.

7.7.3. Given the scale of the proposed development, the separation distance to the remaining 14 no. Natura 2000 sites, and the lack of substantive ecological linkages, I consider that there is no potential for likely significant impacts to arise to these sites, which can be screened out from the need for Appropriate Assessment.

## 7.8. **Appropriate Assessment**

7.8.1. The conservation objectives for **Donegal Bay (Murvagh) SAC (site code: 00133)** are: (1) to maintain the favourable conservation condition of mudflats and sandflats not covered by seawater at low tide [1140]; (2) to maintain the favourable conservation condition of Harbour Seal [1365]; (3) to restore the favourable conservation condition of fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]; and, (4) to restore the favourable conservation condition of humid dune slacks [2190].

7.8.2. The qualifying interests for the SAC are: [1140] mudflats and sandflats not covered by seawater at low tide; [2130] fixed coastal dunes with herbaceous vegetation (grey dunes); [2170] dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*); [2190] humid dune slacks; and, [1365] Harbour Seal (*Phoca vitulina*).

7.8.3. The conservation objectives for **Donegal Bay SPA (site code: 004151)** are: (1) to maintain the favourable conservation condition of Great Northern Diver [A003]; (2) to maintain the favourable conservation condition of Light-bellied Brent Goose [A046]; (3) to maintain the favourable conservation condition of Common Scoter [A065]; (4)

to maintain the favourable conservation condition of Sanderling [A144]; and, (5) to maintain the favourable conservation condition of the wetland habitat in Donegal Bay SPA as a resource for the regularly-occurring migratory waterbirds that utilise it [A999].

- 7.8.4. The qualifying interests for the SPA are: [A003] Great Northern Diver (*Gavia immer*); [A046] Light-bellied Brent Goose (*Branta bernicla hrota*); [A065] Common Scoter (*Melanitta nigra*); [A144] Sanderling (*Calidris alba*); and, [A999] Wetlands.
- 7.8.5. The proposed development does not occur directly within the SAC or SPA, and as such, **direct impacts** on habitats will not arise. **Indirect impacts** may arise to nearby qualifying habitats in the SAC, due to the presence of hydrological pathways (surface/groundwater flows) from runoff and discharge to mudflats and sandflats habitats and the seal population. The development may also indirectly impact on the quality of habitats required by populations of birds for which the SPA is designated.
- 7.8.6. A range of mitigation measures are recommended within the applicant's NIS, including: (1) the requirement for site preparation and construction to adhere to best work practices; (2) the requirement for all works to occur outside the main wildfowl over-wintering period (Oct – April inclusive); (3) ensuring cement/concrete materials do not enter drains and adjacent water bodies; (4) the confinement of construction to a marked working zone, avoiding the site area closest to the coast; (5) the installation and operation of the WWTS in strict accordance with the manufacturer's instructions and with most recent EPA Guidelines, with a long-term maintenance agreement in place; (6) restricting waste waters from entering drains and adjacent water bodies; (7) the storm water design must be implemented and maintained carefully, and the silt/petrol interceptor, through which surface water flows before discharging into local drainage, must be serviced regularly; (8) no floodlights pointing towards Donegal Bay and all lights to be hooded; (9) no exotic plant species to be planted on site and no herbicides to be used prior to works; and (10) the planting of the lower part of the site with native trees to add a further buffer zone between the development and Donegal Bay.
- 7.8.7. The applicant's NIS concludes that, with the identified mitigation measures, there would be no significant adverse effects on any European sites, as a result of the

proposed development. I note that Donegal County Council also considered that the proposed development would not impact on European sites.

- 7.8.8. While I consider that the applicant's NIS contains adequate information, I do not agree with its conclusion, or that of Donegal County Council. As previously identified, I consider that the proposed development is reliant on a heavily engineered wastewater treatment system and surface water drainage system, including land drains and a silt/oil/petrol interceptor, which will require strict, regular maintenance. I further consider that, in the absence of ongoing and suitable maintenance, the proposed development has the potential to impact on Natura 2000 sites, by way of the hydrological connections which exist between the site and Donegal Bay SAC and Donegal Bay SPA. As such, I recommend that planning permission should be refused on this basis.

## **8.0 Recommendation**

- 8.1. I recommend that planning permission be refused for the reasons and considerations set out hereunder.

## **9.0 Reasons and Considerations**

- 9.1. On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the application has been made by a person who has sufficient legal estate or interest in the land the subject of the application to enable the person to carry out the proposed works on the land, or the approval of the person who has such sufficient legal estate or interest. In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.
- 9.2. It is considered that insufficient evidence of a demonstrable economic or social need to live in this rural area has been provided as required under the policy RH-P-3 of the Donegal County Development Plan 2018-2024. Thus, the proposed development would contribute to the encroachment of rural development in this area and would militate against the preservation of the rural environment and the efficient provision

of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 9.3. Having regard to the ground conditions noted on site, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.
- 9.4. On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the Stage 2 Appropriate Assessment undertaken, the Board cannot be satisfied that the development, individually, or in combination with other plans or projects, would not be likely to have a significant effect on European site no. 00133 (Donegal Bay Murvagh SAC) and European site no. 004151 (Donegal Bay SPA), in view of the sites' conservation objectives, by reason of the hydrological links between the subject site and the requirement for ongoing maintenance of the heavily engineered wastewater treatment system and surface water drainage system. In such circumstances, the Board is precluded from granting permission.

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Louise Treacy  
Planning Inspector

5<sup>th</sup> February 2021