



An
Bord
Pleanála

Inspector's Report ABP-308633-20

Development	Construct a single-storey three-bedroom house, wastewater treatment system, vehicular access and associated works
Location	Kill, Dunfanaghy, County Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	20/50136
Applicant(s)	Aoife Gill
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third-Party
Appellant(s)	Joe Dougherty
Observer(s)	None
Date of Site Inspection	4 th May 2021
Inspector	Colm McLoughlin

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
4.0 Planning History.....	6
5.0 Policy & Context	6
6.0 The Appeal	9
6.1. Grounds of Appeal	9
6.2. Applicant’s Response.....	11
6.3. Planning Authority Response	11
6.4. Observations	11
7.0 Assessment.....	12
7.1. Introduction	12
7.2. Legal Interest	12
7.3. Rural Housing Policy - New Issue	13
7.4. Wastewater Treatment.....	14
7.5. Siting & Design.....	16
7.6. Traffic Safety	17
8.0 Appropriate Assessment.....	18
9.0 Recommendation.....	21
10.0 Reasons and Considerations	21

1.0 Site Location and Description

1.1. The appeal site is located on Ramonaghan Lane (L-7113) in the townland of Kill, approximately 1.6km to the southeast of Dunfanaghy town centre in County Donegal. The site is situated in an area characterised by agricultural fields, upland moor and low-density housing on rising ground overlooking Sheephaven Bay. It is accessed from the north via local roads connecting with the N56 national road. The N56 connects Dunfanaghy and the northwest Donegal area with Letterkenny. The appeal site comprises approximately 0.23ha of land that rises steeply by 25m in a southern direction from the local road to the rear of the site. The local road terminates at housing immediately to the west of the site. The site is flanked by a stone wall and a banked ditch along the entrance area.

2.0 Proposed Development

2.1. The proposed development comprises the following:

- construction of a three-bedroom detached single-storey house with a stated gross floor area (GFA) of 126sq.m;
- installation of a wastewater treatment system/septic tank with a sand-polishing filter;
- vehicular access onto a local road;
- connection to mains water supply;
- all associated groundworks and landscaping.

2.2. In addition to the standard planning application documentation and drawings, the application was accompanied by a traffic statement form, a supplementary housing application form, a site suitability assessment report addressing on-site disposal of effluent, a letter from an elected representative referring to the applicant's family connections to the area and a letter of consent from the stated site owner consenting to the planning application, as well as the achievement and maintenance of visibility splays over lands adjacent to the proposed site entrance.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority issued a notification of a decision to grant permission for the proposed development, subject to 11 conditions, the following of which are of note:

Condition no.2 – occupancy clause;

Condition no.3 – provision of visibility splays at the entrance;

Condition no.4 – further details of entrance proposals.

3.2. Planning Authority Reports

3.2.1. Planning Report

The initial report of the Planning Officer (March 2020) noted the following:

- the site has been partially cleared of gorse and scrub;
- the site is within a 'stronger rural area' for rural housing policy purposes, and it is not designated as an area of especially high or high scenic amenity in the Development Plan;
- the principle of the proposal is acceptable with respect to housing need, based on the information submitted from an elected representative;
- the design of the house is acceptable, however, further information is required regarding the siting of the house relative to ground levels, landscaping and neighbouring housing finished-floor levels;
- the vehicular access to the site is acceptable, although a third-party has contested the ownership of land available for sight visibility at the entrance;
- stormwater would drain to a ditch and further details are required.

The second report of the Planning Officer (June 2020) noted the following:

- the additional drawings provided reveal that the proposed house would read as part of a cluster of houses;

- stormwater would be directed to an existing stormwater drain along the local road;
- clarification of further information is required with respect to details for the disposal of excavated materials and stormwater drainage sources, including the spring towards the rear of the site.

The recommendation of the final report of the Planning Officer (October 2020) reflects the decision of the planning authority and noted the following:

- excavated materials would be disposed of to a registered landfill;
- following a survey the location of rising water was identified and the stormwater drainage would collect the runoff.

3.2.2. Other Technical Reports

- Executive Engineer – no objection, subject to conditions.

3.3. Prescribed Bodies

- Environmental Health Officer (HSE) – further information initially required and subsequently advised that conditions should be attached to a permission;
- Irish Water – no objection, subject to conditions.

3.4. Third-Party Observations

- 3.4.1. A submission was received from Mr. Joe Dougherty with an address in the subject townland, and this was accompanied by photographs of the site entrance area, land ownership details for the subject area and a copy of a submission to a neighbouring planning appeal (ABP ref. ABP-306370-20). The issues raised are similar to those raised in the grounds of appeal and are covered below under the heading 'Grounds of Appeal'.

4.0 Planning History

4.1. Appeal Site

4.1.1. The planning authority and the appellant refer to the following recent planning applications relating to the appeal site:

- Donegal County Council (DCC) ref. 19/50808 – application withdrawn in July 2019 for a house, a septic tank/treatment system and other associated works;
- DCC ref. 18/51691 – permission was refused by the planning authority in December 2018 for a house, a septic tank/treatment system and other associated works, due to the siting of the house within the receiving elevated landscape, concerns that the wastewater treatment system would be prejudicial to public health based on evidence of waterlogging and drainage, and insufficient information regarding ownership at the entrance area.

4.2. Surrounding Sites

4.2.1. There have been a number of recent planning applications for residential development on the neighbouring lands, including the following:

- ABP ref. 306370-20 (DCC Ref. 19/51590) – permission granted by the Board in June 2020 to Mr. Joe Dougherty for a single-storey extension to a house, located directly opposite to the north of the appeal site;
- ABP ref. 300712-18 (DCC Ref. 19/51590) – permission refused by the Board in July 2018 for demolition of a barn, located approximately 600m to the west of the appeal site, and construction of a house, as the applicant would not meet the criteria for a rural-generated house in this ‘strong rural area’.

5.0 Policy & Context

5.1. National Guidance

National Planning Framework – Project Ireland 2040

5.1.1. National Policy Objective 19 of the National Planning Framework outlines that within areas under urban influence, single housing in the countryside will be facilitated

based on the core consideration of a demonstrable economic or social need to live in the rural area.

Sustainable Rural Housing Guidelines for Planning Authorities

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

5.2. Donegal County Development Plan 2018-2024

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

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

5.2.2. Map 6.2.1 of the Plan identifies the appeal site as being within a 'stronger rural area'. Within such areas the Plan states that one-off rural-generated housing will be facilitated subject to compliance with all relevant policies and provisions of the Plan. Policy RH-P-3 of the Plan specifically outlines that applications for rural housing in stronger rural areas need to comply with Policies RH-P-1 and RH-P-2 of the Plan

and that the applicant must demonstrate that they fit into at least one of the following categories:

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

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

5.2.4. The site is within an area of Moderate Scenic Amenity, which are defined in the Plan as areas generally of agricultural quality that have adequate capacity to absorb suitably positioned and designed development.

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

5.3. Natura 2000 Sites

5.3.1. The Horn Head and Rinclevan Special Area of Conservation (SAC) (Site Code: 000147) is located approximately 0.7km to the north and 1.7km to the west. Horn Head and Fanad Head Special Protection Area (SPA) (Site Code: 004194) is located approximately 1.7km to the west. The Sessiagh Lough SAC (Site Code: 000185) is located approximately 0.3km to the east of the site.

5.4. Environmental Impact Assessment - Preliminary Examination

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

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A third-party appeal against the decision of the Planning Authority was submitted from a person with addresses in Derry and Donegal, stating that they also own property at the subject site, including the house directly opposite to the north of the site. In conjunction with their third-party observation the issues raised by the appellant can be collectively summarised as follows:

Principles and Ownership

- the applicant has not resolved matters raised in the previous reasons for refusal and it is difficult to understand how the planning authority has arrived at their conclusions;
- the applicant continues to include lands that are not in their control within the site and landownership boundaries, including the land at the entrance and an area encompassing the necessary sight access visibility lines to the west;
- the application should have been invalidated in response to the information provided regarding land ownership;
- the vision lines to the west cannot be legally maintained a fact that was acknowledged by the planning authority when assessing a previous application (DCC ref. 18/51691);
- it is unclear how boundaries to be provided to address planning conditions would be treated, despite their potential to interfere with third-party owners;

Design and Siting

- the application initially omitted cross-sections of the proposed site development works, making it difficult to appreciate the extent of groundworks, grading, retaining structures and cut and fill works required, as well as the visual impact of the development within a sensitive landscape;
- the planning authority has failed to provide an assessment of the impacts based on the cross section drawings submitted, regardless of the poor legibility of these drawings;
- queries remain as to who would be the recipient of the planning permission given the lack of clarity regarding land ownership and the various parties involved;
- there would be poor outlook from bedrooms overlooking retaining wall structures. The design of the house is not sensitive to the site or the surrounding landscape and the development would not be compliant with the rural house design guidelines appended to the Development Plan;
- extensive groundworks would be required to facilitate the house;
- 15 years previously the site was used as a quarry for local building works;

Drainage

- the advice of the Environmental Health Officer needs to be considered with regard to the evidence of waterlogging and rising water on site, and how the applicant intends to address this, with concerns arising for the capacity of the stormwater drain along the road;
- the location of the trial holes used in testing the wastewater treatment system have been omitted and further information is required from the designer of the wastewater treatment system to address alterations to the site layout since the original scheme was designed;
- the additional area required for the sand-polishing filter cannot be accommodated on site while adhering to the minimum separation distances to the boundary and the house, as this filter would be within 10m of a land drain;

- details of the surface water drainage proposals are unclear and it is not possible to properly assess the impact of this on the receiving stormwater drainage system.

6.2. Applicant's Response

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

- the applicant has resolved all issues raised in previous reasons for refusal of development on the site;
- the applicant meets the local housing need criteria, as acknowledged by the planning authority, and the ownership of the site is being addressed to allow the applicant to develop a permanent family home at this location;
- legal proceedings have commenced to address land ownership issues, with a view to regulating any boundary and vision line issues;
- the design of the house is sensitive to the site and the excavation works would be kept to a minimum to prevent impacts on the landscape;
- to address the identified run-off from the hill to the rear and the potential impacts on the house and the associated wastewater treatment, a stormwater land drain would be constructed around the perimeter of the site and the wastewater treatment system, before connecting into the stormwater drain on the local road;
- a consulting engineer has advised that the development would not impact on the location of the rising water and they would advise on the stormwater drainage solution.

6.3. Planning Authority Response

6.3.1. The planning authority did not respond to the grounds of appeal within the prescribed period.

6.4. Observations

6.4.1. None received.

7.0 Assessment

7.1. Introduction

7.1.1. I consider the substantive planning issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Legal Interest;
- Rural Housing Policy – New Issue;
- Wastewater Treatment;
- Siting & Design;
- Traffic Safety.

7.2. Legal Interest

7.2.1. The grounds of appeal refer to various documents clarifying the legal owners of lands adjoining, on site and at the entrance to the site. Section 10 of the planning application form states that the applicant is the legal owner of the site and the application cover letter refers to the applicant owning a larger portion of land at the site entrance than had been previously been shown on planning application documents (DCC ref. 18/51691). A letter is also included consenting to the planning application, as well as the achievement and maintenance of visibility splays. I address matters relating to sightline visibility splays under section 7.6 below. In response to the grounds of appeal the applicant states that legal proceedings have commenced regarding land ownership matters.

7.2.2. In addressing 'issues relating to title to land', Section 5.13 of the Development Management Guidelines (2007) outlines that the planning system is not designed to resolve disputes about title to land. The Guidelines also advise that where there is doubt in relation to the legal title of an applicant, and following the clarification sought in additional information, if some doubt still remains, the Planning Authority may still decide to grant permission. However a grant of permission is the subject of Section 34(13) of the Planning and Development Act 2000, as amended, which states that 'a person shall not be entitled solely by reason of permission under this section to carry out any development'. I am therefore satisfied that it would not be reasonable to

withhold planning permission in this case for reasons relating to the legal interest of the applicant in the site and the area required for visibility splays. Should the Board decide to grant planning permission, the onus is on the applicant to ensure that they have adequate legal interest to carry out the proposed development and an advice note to this effect should be attached in the event of a permission arising.

7.3. Rural Housing Policy - New Issue

- 7.3.1. Map 6.2.1 of the Donegal County Development Plan 2018-2024 identifies the appeal site as being within a 'stronger rural area'. Within such areas the Plan states that one-off rural-generated housing will be facilitated subject to compliance with all relevant policies and the provisions of the Plan. Policy RH-P-3 of the Plan specifically outlines that applications for rural housing in 'stronger rural areas' need to comply with policies RH-P-1 and RH-P-2 and that the applicant must demonstrate with evidence that 1.) the applicant's primary employment is in a rural-based activity or 2.) the applicant has a vital link to the rural area or 3.) there are exceptional health circumstances.
- 7.3.2. The applicant has not demonstrated that they fit into categories 1 or 3 referred to in Policy RH-P-3 based on their stated employment or health circumstances. In relation to category 2, the applicant must have 'a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the existence in the rural area of long established ties (7 years minimum) with immediate family members, or by reason of providing care to a person who is an existing resident (7 years minimum)'. The current address of the applicant is not provided with the application, although it is stated that the applicant's connection to the area is based on their grandmother having been born and raised in Drumeason, which would appear to be a townland located approximately 8km to the southeast of the appeal site. The applicant has submitted a letter from an elected representative referring to the applicant's grandmother being from a nearby area and stating that the applicant is known to them and they wish to construct a family home at Kill.
- 7.3.3. Other than this elected representative's letter, it has not been fully substantiated within the planning application through the submission of evidence that the applicant has long-established family ties with this rural community. I am not satisfied that the

information submitted sufficiently or clearly demonstrates that the applicant has a rural-generated housing need to reside in this area based on the stated terms of the Development Plan, including Objective RH-O-3, which seeks to ensure that new residential development in rural areas provides for genuine rural need.

- 7.3.4. In conclusion, the proposed development would not comply with Policy RH-P-3 of the Development Plan, as the applicant has not demonstrated that they have a housing need to reside in this 'stronger rural area'. Furthermore, based on proximity to Dunfanaghy and the extent of surrounding housing, the site is clearly one that is in an area under urban influence and as the applicant has not provided a demonstrable economic or social need to live in this rural area under urban influence the proposals would not comply with National Policy Objective 19 of the National Planning Framework. I consider this to be a new issue that was not raised in relation to the appeal and the Board may wish to seek the views of the parties.

7.4. Wastewater Treatment

- 7.4.1. The site characterisation form submitted with the planning application notes that the site is located on a poor aquifer (bedrock that is generally unproductive except for local zones), where groundwater vulnerability is high. Evidence available from the Environmental Protection Agency (EPA) catchments mapping suggests that the groundwater vulnerability response should actually be based on 'rock at or near the surface' in an area of extreme vulnerability. Notwithstanding this, the applicant has identified the appropriate groundwater response for this area whereby the use of an on-site wastewater treatment system to serve a house would be 'acceptable subject to normal good practice, including attention to other systems nearby and the depth of subsoil over bedrock based on the 'Code of Practice - Wastewater Treatment and Disposal Systems serving Single Houses (population equivalent ≤ 10) (EPA, 2009)'. The applicants' form refers to a drainage ditch running through the site connecting to the local road and surface ponding that is likely linked to use of the site for cattle grazing. No springs or wells were noted in the site characterisation form. The grounds of appeal refer to the Environmental Health Officer's report highlighting the potential for substantive run-off from steeply sloping ground to the rear of the site and rising water. Bedrock was encountered at a depth of 1.8m in the trial hole

consisting of layers of gravelly silt/clay, while the water table was noted at a depth of 1.4m.

- 7.4.2. Percolation tests undertaken for the proposed development revealed an average T_{100} -value of 180 and an average T-value of 41. The EPA Code of Practice advises in this case the site would be suitable for either a septic tank system or a secondary treatment system providing for a discharge of effluent to groundwater. The depth of the water table coupled with the high T-value would indicate a reasonable permeability of the soils. To test the percolation quality of the upper gravelly silt/clay, a P-test was undertaken and this provided a P-value of 56, which indicates that the site is suitable for a secondary treatment system with polishing filter at ground surface or over ground. Based on my visit I would have reservations regarding the information provided, given the existence of rock at the surface and a visible flow of surface water draining from an escarpment down through the site. Details submitted clarify that a packaged wastewater treatment system with a partially-raised (300mm) sand-polishing filter would be installed. The planning authority require the attachment of various conditions primarily providing for the efficacy and performance of the proposed wastewater treatment system to be maintained.
- 7.4.3. Planning permission had previously been refused in 2018 for a house on this site, in part due to concerns that the wastewater treatment system would be prejudicial to public health, based on evidence of waterlogging and surface water drainage (DCC ref. 18/51691). Following requests for further information and clarification of further information as part of the subject application, the applicant provided drawing details showing the location of a spring on site rising from the steep ground to the rear (see A3 drawing titled 'Site Layout'). This drawing also identified the alignment of a 225mm perimeter perforated land drain to be constructed around the wastewater treatment system, including the sand-polishing filter, which would be filled with pea gravel, prior to finally discharging to a roadside stormwater drain.
- 7.4.4. The polishing filter would need to be a minimum of 10m from the house and 10m from an open drain to comply with the EPA Code of Practice minimum separation distances set out in Table 6.1. The polishing filter would be 3.5m from the proposed land drain to be installed to cater for stormwater. The site characterisation form identified 'a significant bedrock outcrop near the location of the proposed percolation field' and there would appear to be limited scope to provide a polishing filter area

elsewhere on site compliant with the minimum distance criteria due to this exposed bedrock and also due to the steep topography. Furthermore, insufficient information has been provided in evidence that the land drains to be installed would be capable of holding the anticipated flow from the rising spring to the rear of the site, the volume and capacity of which would fluctuate based on weather conditions. This is compounded by the fact that waterlogging has been identified to occur within the site. Consequently, there would be substantial potential for the land drains to be installed to become inundated with stormwater, which in turn could lead to the sand-polishing filter becoming overwhelmed and malfunctioning of the wastewater treatment system. These hydraulic issues would have implications for public health, in an area featuring a high density of individual wastewater treatment systems serving houses. Wastewater that has not been fully treated could ultimately be discharged into the stormwater drain at the front of the site and it is unclear where this stormwater drain is discharging to.

- 7.4.5. In conclusion, having regard to the surface water rising on site, the areas of exposed bedrock and the evidence of waterlogging, as well as the insufficient evidence regarding the capacity of the land drains to continually contain stormwaters arising on site and the failure to meet minimum separation distances from the proposed sand-polishing filter to the proposed lands drains, the site cannot be satisfactorily drained by means of the proposed on-site wastewater treatment system alongside the stormwater drainage proposals. I consider that the proposed development would pose an unacceptable risk to groundwater and waters discharging to a stormwater drain, which would be prejudicial to public health. I recommend that permission should be refused on these grounds.

7.5. Siting & Design

- 7.5.1. Permission was previously refused in 2018 for a house on site, in part due to the elevated siting of the house. The proposed development is for a single-storey detached house with a roof ridge height of approximately 4.85m, based on the form of a vernacular agricultural barn building. The house would be situated approximately 8m above and 40m from the local road to the front of the site. The applicant states that the finished-floor level has been dropped by 4.5m when compared with the previously refused proposals (DCC ref. 18/51691). The proposed

house would be visible from the approaching local road to the northeast and it would be a minimum of 3m to 4m higher than the neighbouring cluster of houses.

7.5.2. Views of the house from the wider area would largely be restricted by virtue of the sloping topography of the area and the site is not visible from protected views, prospects or features of interest identified in the Development Plan. The site is located in an area of 'Moderate Scenic Amenity' based on Map 7.1.1 of the Development Plan, which are described as areas that have adequate capacity to absorb suitably positioned and designed development. Where visible from the local road network and the immediate lands, the house would be viewed against a backdrop of steeply rising lands to the rear of the site, as well as hedgerows and trees, agricultural buildings and neighbouring rural houses surrounding the site. The house would largely screen views of those parts of the hillside to be excavated as part of the development groundworks. Furthermore, the proposed design and site layout arrangements would be in accordance with the provisions set out within Appendix 4 to the Development Plan, relating to the location, siting and design guidance for 'Building a House in Rural Donegal'. The grounds of appeal refer to concerns regarding the aspect and outlook for the bedroom areas of the house, however, I note that the house would be of generous floor area and the primary living areas would be served by extensive glazing and outlook, as well as aspect in three directions, thereby providing a sufficiently high standard of residential accommodation.

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

7.6. Traffic Safety

7.6.1. Table 3 to Appendix 3 of the Development Plan outlines that proposals for single accesses onto local roads, such as that fronting the appeal site where an 80km/hr speed limit applies, require 90m to 120m vision lines in both directions from a point 2.4m setback from the roadside. The Plan also states that deviation from these requirements may be considered upon certification by the applicant's designer. Due to the road alignment and boundary features, vision lines from the entrance would

not meet the 90m to 120m required in the Development Plan. The site layout plan drawing (see drawing titled 'Floorplans, Elevations, Section a/a & Site Layout') submitted in response to the further information response, illustrates that 70m visibility would be achievable in an easterly direction at the entrance to the site off the local road and 50m visibility would be achievable in a westerly direction. The grounds of appeal assert that the stated 50m visibility from the proposed entrance along the local road to the west would not be achievable due to land ownership constraints that would ultimately restrict the maintenance of the sightline to the west. This would appear to be confirmed by the blue line boundary detailed on the site location map submitted as part of the application. Notwithstanding this, having visited the site and noted traffic speeds achievable on the immediate stretch of road, the capacity of this single lane road and as the road terminates 50m to the west, I am satisfied that the available sightlines, though deviating from Development Plan standard requirements, would be appropriate and would not pose an unacceptable risk to traffic safety in this context.

- 7.6.2. In conclusion, I am satisfied that the sightlines available at the access to the public road are adequate to cater for the traffic that would be generated by the proposed development. It would not, therefore, give rise to traffic hazard and permission should not be refused for this reason.

8.0 Appropriate Assessment

Stage 1 - Screening

- 8.1. The site location is described in section 1 of this report above. A description of the proposed development is provided in section 2 of this report and expanded upon below where relevant. Neither a screening report for appropriate assessment nor a Natura Impact Statement were submitted with the application. Consultation was not undertaken with the Department of Culture, Heritage and the Gaeltacht.
- 8.2. The site features hillside sloping steeply in a northern direction, which has recently been cleared of gorse and scrub. A drainage ditch on site connects with a roadside drain fronting the site and rising water emerges on site from the hillside escarpment to the rear.

Description of European Sites

- 8.3. The nearest European sites to the appeal site are listed in table 1 of section 5.3 above.

Is the Project necessary to the Management of European sites?

- 8.4. The project is not necessary to the management of a European site.

Direct, Indirect or Secondary Impacts

- 8.5. The potential direct, indirect and secondary impacts that could arise as a result of the proposed works, which could have a negative effect on the qualifying interests of European sites, include the following:
- impacts on water quality during the construction phase, for example via release of suspended solids;
 - impacts on water quality during the operation phase, for example via release of pollutants from wastewaters arising.
- 8.6. Using the source-pathway-receptor model, there is potential direct connectivity via the drainage ditch and rising waters running through the site with Horn Head and Rinclevan SAC (Site Code: 000147), as the roadside drain that the connect to would be likely to connect into a stream 160m to the north of the site that flow into the SAC waters.
- 8.7. Horn Head and Fanad Head SPA (Site Code: 004194), Sessiagh Lough SAC (Site Code: 000185) and all other European sites, are initially screened out from this assessment, based on their conservation objectives and the separation distance from the appeal site to these European sites, as well as either the location of the European sites upstream of the appeal site or the dilution effect of intervening open marine waters to European sites that are downstream.
- 8.8. Horn Head and Rinclevan SAC (Site Code: 000147) is designated for intertidal and coastal habitats that support water-dependent species such as harbour seal. The Conservation objectives for Horn Head and Rinclevan SAC seek:
- to maintain the favourable conservation condition of embryonic shifting dunes;

- to maintain the favourable conservation condition of shifting dunes along the shoreline with *Ammophila arenaria* ('white dunes');
- to maintain the favourable conservation condition of fixed coastal dunes with herbaceous vegetation ('grey dunes');
- to restore the favourable conservation condition of dunes with *Salix repens* ssp. *Argentea* (*Salicion arenariae*);
- to maintain the favourable conservation condition of humid dune slacks;
- to restore the favourable conservation condition of machairs;
- to maintain the favourable conservation condition of Geyer's Whorl Snail;
- to maintain the favourable conservation condition of Grey Seal;
- to maintain the favourable conservation condition of Petalwort;
- to maintain the favourable conservation condition of Slender Naiad.

8.9. There would not be a direct pathway between the proposed development and Port Lough, which contains the population of Slender Naiad and forms part of the Horn Head and Rinclevan SAC, is inland and to the northwest of the site. Stormwater on site is proposed to discharge into the roadside drain and I have highlighted concerns in section 7.4 regarding the potential for the wastewater treatment proposals to pose a risk to groundwater, as well as waters entering this roadside drain. It is not clear where this roadside drain discharges to, but it is likely to discharge to a stream that ultimately discharges to Horn Head and Rinclevan SAC. Consequently, based on the information provided, there is a lack of certainty and the proposals may have potential to result in a reduction in the water quality within the SAC marine habitats. Therefore, it cannot be reasonably ruled out beyond scientific doubt that there would not be significant effects, either individually or in combination with other plans or projects, on the Horn Head and Rinclevan SAC on the basis of the information available.

In-Combination Effects

8.10. I do not consider that there are any specific in-combination effects that arise from the development when taken in conjunction with other plans or projects.

Appropriate Assessment Screening Conclusion

8.11. On the basis of the information provided with the application and in response to the appeal, and in the absence of 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 the Horn Head and Rinclevan SAC (Site Code: 000147), in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission. The Board may wish to consider requesting further information to address this, however, I draw attention to the substantive reasons for refusal set out above.

9.0 Recommendation

9.1. I recommend permission be refused for the reasons and considerations set out below, as well as the attachment of an advice note with respect to a new issue highlighted above.

10.0 Reasons and Considerations

1. Having regard to the conditions on site, including the water rising from the hillside, exposed bedrock in areas and waterlogging, as well as the proposals to install land drains and a wastewater treatment system that would feature a sand-polishing filter area that would fail to meet the minimum separation distance standards to lands drains, as required within the "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)", 2009 and subsequent clarifications issued by the Environmental Protection Agency, the Board is not satisfied that it has been satisfactorily shown that the subject site is capable of disposing of wastewater generated by the proposed development, safely and without prejudicing public health. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. On the basis of the information provided with the application and in response to the appeal, and in the absence of 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 the Horn Head and Rinclevan SAC (Site Code: 000147), in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission.

Advice Note: The site of the proposed development is located in a stronger rural area, as identified in the Donegal County Development Plan 2018 – 2024, wherein policies aim to manage the extent of development whilst facilitating those with a genuine rural-generated housing need. It is considered that the proposed development does not comply with Development Plan policies in relation to rural housing, in particular Policy RH-P-3, as the applicant has failed to demonstrate that they have a rural-generated housing need to reside in this stronger rural area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area. However, the Board considered that this was a new issue and decided not to pursue this issue in the light of the substantial reasons for refusal set out above.

Colm McLoughlin
Planning Inspector

12th May 2021