



An
Bord
Pleanála

Inspector's Report ABP-309679-21

Development	Retain site development works and construct a two-storey house and garage with a vehicular access and wastewater treatment system
Location	Ballykeeran, Kilmacrenan, County Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	20/50162
Applicant(s)	Pauline McLaughlin
Type of Application	Retention Permission & Permission
Planning Authority Decision	Grant
Type of Appeal	Third-Party
Appellant(s)	Nigel McCutcheon
Observer(s)	None
Date of Site Inspection	5 th May 2021
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1.** The appeal site is located in the rural townland of Ballykeeran, approximately 500m east of Kilmacrenan village and approximately 8km northwest of Letterkenny. The surrounding area is characterised by agricultural fields bordered by hedgerows and trees, interspersed with rural housing generally fronting onto local roads. There is a community recreational facility to the northeast of the site.
- 1.2.** The site comprises c.0.98ha of land that has been subject to groundworks and has been raised and levelled, albeit with some mounded materials. A gravel track has been laid out at a gated entrance to the site off the local road (L-1412-1). Sections of hedgerows, fence and boulders mark the roadside boundary. There is an open drain along the western, northern and eastern boundaries of the site. Ground levels drop gradually in a northeast direction.

2.0 Proposed Development

- 2.1.** The development proposed to be retained comprises the following:
 - site development groundworks.
- 2.2.** The proposed development would comprise the following:
 - construction of a four-bedroom detached two-storey house with a stated gross floor area (GFA) of 251sq.m;
 - construction of a detached two-storey garage with a stated GFA of 97sq.m;
 - installation of a wastewater treatment system with sand / soil-polishing filter;
 - vehicular access;
 - connection to mains water supply;
 - all associated development, including landscaping.
- 2.3.** In addition to the standard planning application documentation and drawings, the application was accompanied by a letter of consent from the stated landowner not objecting to the application, a letter from a local councillor supporting the applicant's case for compliance with rural housing policy, a traffic survey, a Land Deposit and

Fill Profile report and a Site Suitability Assessment report addressing on-site disposal of effluent.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant retention permission and permission for the development, subject to 17 conditions, the following of which are of note:

Condition 3 – a seven-year occupancy clause applies;

Condition 5 – requirements for the front boundary treatment.

3.2. Planning Authority Reports

3.2.1. Planning Report

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

- the site is within an area of 'high-scenic amenity' and a 'stronger rural area' and sufficient details to show compliance with housing need policies for this area has not been provided;
- the proposed house design and garage are acceptable, and would not impact on the amenities of neighbouring residents;
- vehicular access and wastewater treatment proposals were previously considered acceptable by the Planning Authority;
- the applicant should provide details of those who prepared the Land Deposit and Fill Report submitted with the application;
- an ecological report is required addressing the likely effects of the project on Leannan River Special Area of Conservation (SAC) (Site Code: 002176), given the hydrological connectivity between these sites;
- an Environmental Impact Assessment (EIA) is not required.

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

- sufficient details in evidence of the applicant's connection to the area for a period exceeding seven years has not been provided;
- the screening report submitted concludes that specific mitigation measures are not required with respect to the development and that the development would not have an effect on Leannan River SAC.

The recommendation of the Planning Officer in their final report (February 2021) reflects the decision of the Planning Authority and noted the following:

- the information submitted demonstrates the applicant's established links to the rural hinterland of Kilmacrenan;
- an Appropriate Assessment is not required.

3.2.2. Other Technical Reports

- Roads and Transportation Department – no objection, subject to conditions;
- Environmental Health Officer – plans have not been assessed by this section;
- Executive Chemist – no comments;
- Water and Environment – a Construction and Demolition Waste Management Plan should be submitted.

3.3. Prescribed Bodies

- An Taisce – no response;
- Minister for Culture, Heritage and the Gaeltacht – no response.

3.4. Third-Party Observations

- 3.4.1. During consideration of the planning application, the Planning Authority received an observation from one third party. The issues raised in this observation are similar to those raised within the grounds of appeal and they are collectively summarised under the heading 'Grounds of Appeal' below.

4.0 Planning History

4.1. Appeal Site

4.1.1. The following recent planning applications relate to the appeal site:

- ABP reference (ref.) 306086-19 / Donegal County Council (DCC) ref. 19/50064 – permission was refused by the Board in March 2020 for the retention of site development works and the construction of a house with a septic tank, due to concerns regarding the safe treatment and disposal of wastewater, as well as the absence of an Appropriate Assessment (AA) Screening Report and a Natura Impact Statement (NIS);
- DCC ref. 07/50330 - outline planning permission was granted by the Planning Authority in August 2007 for a house with an on-site wastewater treatment system.

4.2. Surrounding Sites

4.2.1. Planning applications in the immediate vicinity of the site primarily relate to one-off housing proposals, as well as proposals relating to a recently constructed community recreational facility adjacent to the northeast of the site (DCC ref. 16/51180).

5.0 Policy & Context

5.1. National Guidance

National Planning Framework – Project Ireland 2040

5.1.1. National Planning Objective (NPO) 19 of the National Planning Framework (NPF) outlines that in rural areas, other than those under urban influence, the provision of single housing in the countryside will be facilitated based on siting and design criteria for rural housing in statutory guidelines and plans and having regard to the viability of smaller towns and rural settlements.

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 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 site is outside the settlement framework boundary for Kilmacrenan, based on maps accompanying the Plan. The following rural housing objectives of the Development Plan are relevant to this appeal:

- RH-O-3: To ensure that new residential development in rural areas provides for genuine rural need;
- 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;
- 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 area 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. ‘Building a House in Rural Donegal: A Location Siting and Design Guide’ forms Appendix 4 to the Plan and includes technical and development management guidance for rural housing.

5.3. Natural Heritage Designations

5.3.1. The nearest natural heritage designated sites to the appeal site, including SACs and Special Protection Areas (SPAs), comprise the following:

Table 2. Natural Heritage Designations

Site Code	Site Name	Distance	Direction
002176	Leannan River SAC	350m	north
004060	Lough Fern SPA	2.3km	northwest

000116	Ballyarr Wood SAC	3.1km	west
004039	Derryveagh and Glendowan Mountains SPA	7.2km	west
002047	Cloghernagore Bog and Glenveagh National Park SAC	7.2km	west
002287	Lough Swilly SAC	7.3km	east
004075	Lough Swilly SPA	7.6km	east
002159	Mulroy Bay SAC	8.3km	north
001190	Sheephaven SAC	12.3km	northwest
001179	Muckish Mountain	14.9km	northwest

5.4. Environmental Impact Assessment - Preliminary Examination

- 5.4.1. It is proposed to retain site development works that required the importation of a stated 7,000 cubic metres of excavated uncontaminated material to the site from a neighbouring project involving trenching of a new watermain pipeline for the Letterkenny Regional Water Supply Scheme. Class 11(b) of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2021 requires an EIA of any installations for the disposal of waste with an annual intake greater than 25,000 tonnes. While the annual intake in tonnage has not been set out by the applicant, based on the total cubic metre intake, I am satisfied having regard to the standard volume to weight conversion rates for such materials, the rate of intake would not exceed the threshold for EIA, as set out in the aforementioned Regulations.
- 5.4.2. Having regard to the limited nature and scale of the proposed development and the development to be retained, it is considered that the issues arising from the proximity to a European Site can be adequately dealt with under the Habitats Directive (Appropriate Assessment), as there is no likelihood of other significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.
- 5.4.3. Should the Board consider otherwise, I note that under section 34(12) of the Planning and Development Act 2000, as amended, retention permission may not be sought for a development that requires an EIA or indeed formal screening for EIA.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal from a third-party with an address in Kesh, County Fermanagh, which were accompanied by land registry details, previous application details and other correspondence, can be summarised as follows:

- the applicant does not meet the local housing need requirements and the submitted letter from a local-elected representative does not detail the applicant's residence;
- the site is prone to flooding and piled foundations would be necessary;
- there is an intention to provide for additional houses on the subject landholding;
- the proposed house is of excessive scale and would provide for overlooking of neighbouring houses;
- the deposited fill materials contain demolition waste, plastic, timber and excavated materials;
- there is already a high concentration of septic tanks in the vicinity and the proposed development would pose a threat of contamination to groundwater;
- the development would have implications for the Leannan River and an EIA is required;
- the road survey submitted is out of date and has not been carried out by a suitably qualified person;
- the site suitability report is not dated and the report regarding fill materials is not signed by a suitably qualified person.

6.2. Applicant's Response

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

- the bona fides of the appellant are questioned given their stated address, with numerous unfounded accusations made;
- the appellant has appealed various other applications in the vicinity of the site;
- recent improvement works to the N56 national road have improved access to the area;
- the applicant has gone to length in providing details demonstrating compliance with rural housing need policy, including details of the applicant's family home 2.7km from the site and their inability to access other housing;
- the County has suffered from population decline and NPO 15 of the NPF supports sustainable development of rural areas;
- the proposed house is of similar scale to neighbouring houses;
- the development would not negatively impact on Leannan River SAC, as clarified further in additional correspondence from the applicant's environmental consultants;
- various matters have been accepted by the Planning Authority, including wastewater treatment and roads access, and a letter of consent to make the application is appended;

6.3. Planning Authority Response

6.3.1. The Planning Authority response to the grounds of appeal reconfirms various matters raised within their report on the application, while also raising the following:

- the previous site suitability assessment was based on an unfilled smaller site and the proposed development provides for a polishing filter further from the proposed house and land drains, when compared with the previous proposals refused permission by the Board (ABP ref. 306086-19);
- the screening report for AA prepared for the previous planning application was not forwarded to the Board as part of the previous appeal (ABP ref. 306086-19);
- the personal circumstances of the applicant and the information provided, including correspondence from a doctor, a priest and a local-elected

representative, justify compliance with rural housing policy and conditions can be attached to further confirm same;

- no evidence of the applicant owning another house nearby has been provided;
- the site is not prone to flooding and there is nothing to suggest that piled foundations would be necessary for the construction works;
- the previous house designs, which are similar to the subject proposals, and the fill retention works were not of concern to the Board in the refused appeal (ABP ref. 306086-19);
- the reports submitted with the application are accurate and remain relevant.

6.4. Observations

6.4.1. None received.

6.5. Further Submissions

6.5.1. Following consultation by An Bord Pleanála with the Minister for Culture, Heritage and the Gaeltacht, no further submissions were received.

7.0 Assessment

7.1. Introduction

7.1.1. The proposals can be split into both the existing development, comprising fill works to be retained, and the proposed development, generally comprising the construction of a house and a garage to be served by a wastewater treatment plant, all on a larger site and slightly revised layout when compared with the previously refused development under ABP ref. 306086-19. The applicant is not the same as the applicant subject of the previously refused permission (ABP ref. 306086-19).

7.1.2. The subject proposals would provide for a vehicular access in a similar location to the vehicular access previously considered not to be of concern under ABP ref. 306086-19. Notwithstanding that the grounds of appeal assert that the applicant's road survey (dating from December 2018) is out-of-date, the Roads Engineers in the

Planning Authority do not raise concerns regarding the access arrangements and having visited the site I am satisfied that the proposed development accessing onto a relatively straight section of local road with good visibility in both directions, would not give rise to substantive risks for traffic safety and permission should not be refused for this reason.

- 7.1.3. The siting and design of the house was not considered an issue under the Board's previous decision (ABP ref. 306086-19) and while I acknowledge the concerns raised by the appellant in relation to the scale of the house and the potential for overlooking, it is clear that the proposed house would be broadly in keeping with the character and scale of housing in the area and it would be more in keeping with the Development Plan rural housing design standards when compared with the previously proposed house. Furthermore, the house on site would be sufficient separation distances (15m minimum) from neighbouring house boundaries to avoid the potential for excessive direct overlooking of these properties. Accordingly, permission should not be refused for reasons relating to the siting and design of the proposed house or the resultant impacts on neighbouring residential amenities.
- 7.1.4. The site development works were not assessed as being contrary to planning policy provisions relating to visual impacts under the previous refusal of planning permission (ABP ref. 306086-19), and the implications of these works with respect to wastewater treatment and appropriate assessment are considered under the respective headings below.
- 7.1.5. Consequently, I consider the substantive planning issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:
- Rural Housing Policy;
 - Wastewater Treatment;
 - Appropriate Assessment.

7.2. Rural Housing Policy

- 7.2.1. The decision to refuse planning permission for a house under ABP ref. 306086-19 did not include a reason relating to non-compliance with rural housing policy, however, an advice note was attached to the Board's Direction to highlight their

concerns in this regard. As noted above, the application was submitted by a different applicant and the grounds of appeal assert that this applicant does not meet the local housing need requirements. Following submissions of further information, the Planning Authority considered that sufficient documentation had been submitted to substantiate that the applicant fulfilled the rural-generated housing need criteria of the Development Plan and that the proposed development would, therefore, comply with rural housing policy of the Donegal County Development Plan 2018-2024.

7.2.2. 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 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.

7.2.3. Criteria 1 and 3 of policy RH-P-3 of the Development Plan are not satisfied by the applicant, as they have not demonstrated that their primary employment is in a rural-based activity or that there are exceptional health circumstances, notwithstanding the stated personal circumstances of the applicant. The application asserts that the proposed house would be their primary, principal and permanent residence and that they have a vital link to the area by reason of having lived in this community for over seven years and as there are immediate family members of the applicant residing in the community for over seven years, thereby fulfilling criteria 2 of policy RH-P-3. A letter from an Elected Member of the Local Authority asserts that the applicant satisfies the local housing need criteria 2 of policy RH-P-3 of the Development Plan.

7.2.4. Information, provided by the applicant in response to a clarification of further information request, including correspondence stated to be from a local parish priest and a GP Practice, refers to the applicant's present address and having been a resident of the Termon area, which is located approximately 2km to 4km to the northwest of the appeal site. In response to the grounds of appeal, the applicant indicates that their family home is located 2.7km to the northwest of the appeal site, and due to personal circumstances this is where they are currently residing. The information available, including details outlined in the third-party grounds of appeal,

would appear to attest to the applicant having long-established vital links within a reasonable distance of the appeal site.

- 7.2.5. Policies RH-P-1 and RH-P-2 provide guidance for rural housing particularly in relation to appropriate designs, integration of proposals into the landscape and the environment, development parameters, suburbanisation and the erosion of the rural character of an area. Under Policy RH-P-2 the acceptability of a proposal will be guided, inter alia, by the need for a proposed dwelling to avoid the creation or expansion of a suburban pattern of development in rural areas. I note the proximity of the site to Kilmacrenan village, approximately 250m outside the settlement framework boundary for the village, as identified within the County Development Plan, and the existing pattern of development in the area, including extensive one-off and small housing developments illustrating pressure for development in this area.
- 7.2.6. NPO 19 of the NPF outlines that in rural areas such as this, the provision of single housing in the countryside will be facilitated based on siting and design criteria for rural housing in statutory guidelines and plans and having regard to the viability of smaller towns and rural settlements. Consequently, given the site context, including proximity to Kilmacrenan and the pattern of housing in the immediate site area, I consider that the proposed development would contribute to the creation and expansion of a suburban pattern of development in this rural area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure.
- 7.2.7. In conclusion, the proposed development would contravene the provisions of the NPF and would be contrary to the provisions of RH-P-2 of the Development Plan. Permission and retention permission for the development should be refused for this reason.

7.3. Wastewater Treatment

- 7.3.1. In refusing planning permission under ABP ref. 306086-19, it was stated that it had not been demonstrated that the effluent arising from the proposed development could be satisfactorily treated and disposed due to the soil and ground conditions on site. The grounds of appeal assert that there is a high concentration of septic tanks in the vicinity and the proposed development would pose a threat of contamination to

groundwater. Housing in this area require individual on-site wastewater treatment systems.

- 7.3.2. Assessment of this aspect of the development was not undertaken by the Environmental Health Officer from the HSE, which is the standard consultation arrangement for this Planning Authority. Notwithstanding this, the Planning Authority assert that the revised site assessment submitted with this application provides more positive results than the site assessment submitted with the application that was previously refused permission (ABP ref. 306086-19). Appendix 4 of the Development Plan, requires the disposal of wastewater from a dwelling to be carried out in accordance with the Environmental Protection Agency (EPA) standards, which include the 'Code of Practice for Domestic Waste Water Treatment Systems (population equivalent ≤ 10) 2009'.
- 7.3.3. The site characterisation form (June 2020) 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 extreme. The applicant has correctly 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 EPA Code of Practice. The site characterisation form refers to a drainage ditch running along the northern boundary of the site. No springs or wells were noted in the vicinity within the site characterisation form. The trial hole excavated to a depth of 1.8m did not reveal a water table and the soil solely consisted of gravely clay / silt.
- 7.3.4. Percolation tests undertaken for the proposed development revealed an average T-value of 23. Despite the EPA Code of Practice allowing for the house to be served by either a septic tank system or a secondary treatment system providing for discharge of effluent to groundwater, to account for the potential risks to the River Leannan SAC it was decided to install a biological aerated filter mechanical wastewater treatment module with a raised sand / soil polishing filter measuring 90sq.m. The decision of Planning Authority includes a condition setting out the various parameters for the functioning and construction of this system.

- 7.3.5. The Land Deposit & Fill Profile Report accompanying the planning application refers to six trial holes excavated to a depth of between 0.95m and 1.8m, and comprising of soil and stones, which were firm and dry underfoot during excavations. The article 27 EPA information appended to this report states that the quantity of material accepted at the site amounted to 7,000 cubic metres and contained uncontaminated coarse granular material that was placed in layers and rolled to facilitate the development of a house on site. The grounds of appeal refer to the area being subject to flooding, but no reference to same is provided in the site characterisation form. Where site improvement works are undertaken across an entire site, the EPA Code of Practice states that it is necessary to perform testing of each 300mm layer, as the process of emplacing lifts of soil progresses. After each lift is placed, percolation tests should be carried out and details of the type of testing required is also outlined. Such testing has not been carried out as part of the subject proposals. While I recognise that the placing of soils has already occurred on site, retrospective testing has evidently not taken place at 300mm intervals.
- 7.3.6. While the site was dry and firm underfoot during testing, there was also some evidence of ponding water on site at the time of my visit and in photographs submitted as part of the application documentation. The Inspector assessing the previous appeal (ABP ref. 306086-19) also noted significant stands of water on site during their inspection with the site substantially wet underfoot throughout. Despite the site characterisation form specifications requiring the removal of the upper 100mm of topsoil for the sand / soil polishing filter, the evidence of compaction of the filled soils on site and of surface water ponding on top of these soils, would be likely to lead to the raised sand / soil polishing filter becoming overwhelmed when in use. Consequently, wastewater would not be adequately treated and this could lead to a malfunctioning of the wastewater treatment system. In conclusion, I am satisfied that the information presented and available does not confirm that the site improvement works have been carried out in a manner that would be capable of safely allowing for the treatment and disposal of wastewater associated with the development in line with the EPA Code of Practice. Furthermore, the additional specification set out by the applicant to provide for a secondary biological aeration treatment would not circumvent this issue.

- 7.3.7. These hydraulic issues would have implications for public health, as well as surface water and groundwater quality, in an area featuring a high density of individual wastewater treatment systems serving houses. Wastewater that has not been adequately treated could ultimately discharge to the land drain that is situated 15m to the north of the proposed sand / soil polishing filter, which in turn drains north into Leannan river.
- 7.3.8. In conclusion, having regard to the nature of the soils on site and the evidence of surface ponding / soil compaction, as well as the insufficient evidence regarding the adequacy of the layers of soils and subsoils to treat wastewaters, notwithstanding the use of a higher specification secondary treatment system, the site cannot be satisfactorily drained by means of the proposed on-site wastewater treatment system. The proposed development would pose an unacceptable risk to groundwater and waters discharging to a land drain connecting with the Leannan river, which would be prejudicial to public health and local aquatic ecology. I recommend that permission and retention permission for the development should be refused to be granted for this reason.

7.4. Appropriate Assessment

Stage 1 - Screening

- 7.4.1. The first test of Article 6(3) of the Habitats Directive is to establish if the proposed development could result in likely significant effects on a European site. This is considered as stage 1 of the appropriate assessment (AA) process i.e. screening. The screening stage is intended to be a preliminary examination. If the possibility of significant effects cannot be excluded on the basis of objective information, without extensive investigation or the application of mitigation, a plan or project should be considered to have a likely significant effect and an AA would need to be carried out.
- 7.4.2. The previous decision to refuse to grant planning permission under ABP ref. 306086-19 stated that the Board was precluded from granting permission, as they were not satisfied that the development, individually, or in combination with other plans or projects, would not be likely to have a significant effect on River Leannan SAC (Site Code: 002176), in view of the site's conservation objectives.

Submissions

- 7.4.3. The grounds of appeal assert that the development would have implications for the Leannan River. The National Parks and Wildlife Service of the Department for Culture, Heritage and the Gaeltacht did not respond to consultation during the application or appeal process.
- 7.4.4. Following a request from the Planning Authority, in order to determine whether or not AA is required, an Ecological Report dated November 2020, was submitted by the applicant from Greentrack Environmental Consultants. While the Ecological Report addresses various issues under the Habitats Directive, including a conclusion that the project would not have adverse effects on the integrity of a European site, it is not a screening statement or a Natura Impact Statement specifically for the purposes of AA.

Site Location

- 7.4.5. The site location is described in section 1 of this report and expanded upon in section 7.3 with respect to surface water drainage. The open land drain along the northern boundary of the site drains north to the Leannan river. According to the applicant, the site consists of spoil and bare ground, recolonising bare ground, scrub and treeline habitats. Species of note, including invasive species, were not identified on site during surveys, nor were habitat of note identified in the adjoining lands.

Development Description

- 7.4.6. A description of the proposed development is provided in section 2 of this report and expanded upon in section 7 above. Section 4.4 of the applicant's Ecological Report also provides a description of various aspects of the project, including the site development works.

Zone of Influence

- 7.4.7. The project is not necessary to the management of a European site. In determining the zone of influence I have had regard to the nature and scale of the project, the distance from the development site to European sites, and any potential pathways that may exist from the development site to a European Site, aided in part by the EPA AA Tool (www.epa.ie). Qualifying interests for the European sites listed in table 2 above are available from the NPWS website (www.npws.ie). With the exception of

those European sites listed in table 2, I do not consider that any other European sites potentially fall within the zone of influence of the project, having regard to the nature and scale of the development, the distance from the development site to same and the lack of an obvious pathway to same from the development site.

Likely Potential Effects

7.4.8. Table 3.1 of the applicant's Ecological Report identifies the potential threats associated with the proposed development, taking into account the characteristics of the proposed development in terms of the site location and the scale of works. A hydrological connection between the development site and a European site is identified in the applicant's Ecological Report, due to the location of open drains bordering the site to the west, east and north. This is discussed further below. The potential effects and their likelihood are as follows:

- Habitat Loss and Alteration - the potential for significant impacts due to loss or alteration of habitats is excluded, as a result of the lack of suitable habitat on site for qualifying interests of SPAs and the intervening distances between the site and European sites.
- Habitat or Species Fragmentation – there would be no loss of habitat within a European site and as a consequence, fragmentation of habitat would not be likely to arise.
- Changes in Population Density - a reduction in the baseline population of species associated with European sites is not likely.
- Disturbance or Displacement of Species – the potential for significant impacts due to disturbance or displacement of species is excluded, due to the nature of the development and the intervening distance between the site and European sites.
- Changes in Water Quality and Resource – the boundary drains discharge to the Leannan river, forming part of the Leannan River SAC (Site Code: 002176). This river flows 2km northeast into Lough Fern, which forms part of Lough Fern SPA (Site Code: 004060), before discharging 6km further to the east of the lake in Lough Swilly, which comprises Lough Swilly SPA (Site Code: 004075) and Lough Swilly SAC (Site Code: 002287).

Preliminary Screening Conclusions

7.4.9. In applying the ‘source-pathway-receptor’ model in respect of potential indirect effects, I am satisfied there is no possibility of significant effects on European sites, other than Leannan River SAC (Site Code: 002176), Lough Fern SPA (Site Code: 004060), Lough Swilly SPA (Site Code: 004075) and Lough Swilly SAC (Site Code: 002287), in light of their conservation objectives, due to the intervening distances and to the absence of a hydrological or any other linkage between the development and these European sites.

Preliminary Sites Screened In

7.4.10. Table 3 states the current conservation objectives for those European sites considered further in this preliminary examination.

Table 3. European Sites – Conservation Objectives

Site Name (Site Code)	Conservation Objectives						
Leannan River SAC (Site Code: 002176)	<p>(1) to restore the favourable conservation condition of oligotrophic waters containing very few minerals of sandy plains;</p> <p>(2) to restore the favourable conservation condition of oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or of the Isoeto-Nanojuncetea;</p> <p>(3) to restore the favourable conservation condition of Freshwater Pearl Mussel;</p> <p>(4) to restore the favourable conservation condition of Atlantic Salmon;</p> <p>(5) to maintain the favourable conservation condition of Otter; and,</p> <p>(6) to restore the favourable conservation condition of Slender Naiad (<i>Najas flexilis</i>).</p>						
Lough Fern SPA (Site Code: 004060)	<p>(1) to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:</p> <table border="1"> <thead> <tr> <th>Bird Code</th> <th>Common Name</th> <th>Scientific Name</th> </tr> </thead> <tbody> <tr> <td>A059</td> <td>Pochard</td> <td><i>Aythya ferina</i></td> </tr> </tbody> </table> <p>(2) to maintain or restore the favourable conservation condition of the wetland habitat at Lough Fern SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.</p>	Bird Code	Common Name	Scientific Name	A059	Pochard	<i>Aythya ferina</i>
Bird Code	Common Name	Scientific Name					
A059	Pochard	<i>Aythya ferina</i>					

Lough Swilly SPA (Site Code: 004075)	To maintain the favourable conservation condition of - Great Crested Grebe, Grey Heron, Whooper Swan, Greylag Goose, Shelduck, Wigeon, Teal, Mallard, Shoveler, Scaup, Goldeneye, Red- breasted Merganser, Coot, Oystercatcher, Knot, Dunlin, Curlew, Redshank, Greenshank, Black-headed Gull, Common Gull, Sandwich Tern, Common Tern and Greenland White-fronted Goose; To maintain the favourable conservation condition of the wetland habitat in Lough Swilly SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.
Lough Swilly SAC (Site Code: 002287)	(1) To maintain the favourable conservation condition of Estuaries; (2) To restore the favourable conservation condition of lagoons; (3) To restore the favourable conservation condition of Atlantic salt meadows; (4) To restore the favourable conservation condition of Otter; (5) To restore the favourable conservation condition of Old oak woodland with Ilex and Blechnum.

7.4.11. Restoring water quality is stated in the NPWS documentation as a key target as part of the conservation objectives for Leannan River SAC and Lough Swilly SAC, but not for Lough Swilly SPA and Lough Fern SPA, whose objectives relate to maintaining or restoring conservation conditions for bird species. The surface water pathway creates the potential for an interrupted hydrological connection between the proposed development and Leannan River SAC and Lough Swilly SAC with potential implications for water quality.

7.4.12. The potential for likely significant effects on the qualifying interests of Lough Fern SPA (Site Code: 004060) and Lough Swilly SPA (Site Code: 004075) can be excluded, in light of their conservation objectives relating to maintaining and restoring bird species, given the nature and scale of the development, and the distance separating the appeal site from these European sites.

7.4.13. The potential for likely significant effects on the qualifying interests of Lough Swilly SAC (Site Code: 002287) can be excluded, in light of its conservation objectives, given the nature and scale of the development and the dilution effect arising from the distance and volume of water separating the appeal site from this European site.

There is no likelihood that pollutants arising from the development, either during site development works, construction or operation, could reach Lough Swilly SAC (Site Code: 002287), as well as Lough Fern SPA (Site Code: 004060) and Lough Swilly SPA (Site Code: 004075) for that matter, in sufficient concentrations to have any likely significant effects on these European sites, in view of their qualifying interests and conservation objectives.

Test of Likely Significant Effects

- 7.4.14. According to the EPA, the water quality of the Leannan river is classified as 'good'. The open drains and stretch of Leannan river closest to the appeal site is not assigned a Water Framework Directive (WFD) risk score, while downriver sections of Leannan river closest to Lough Fern are assigned as being 'not at risk' of achieving 'good' water quality status.
- 7.4.15. **Water Quality at Site Development Phase** – Having regard to the information submitted with the application, including the Ecological Report, it is stated that the fill on site was not contaminated and that during fill works a silt fence was used to create a physical buffer from the site works and the open drains, to reduce the danger of sediment entering the open drains leading to Leannan river. The use of silt fences appears to have been specifically undertaken to reduce the potentially harmful effects of the project on downstream water quality, particularly those within the Leannan River SAC, and I am satisfied that this measure comprises mitigation for the purposes of AA. The evidence available is that the fill materials do not contain contaminated material and consist of uncontaminated soils and gravels.
- 7.4.16. **Water Quality at Construction Phase** – Based on the applicant's water samples taken from two points along the open drain leading to the Leannan river, the applicant states that the level of recorded suspended solids at 7mg/l and less than 5mg/l, would not present an issue for water quality. The construction of the house and associated development on this site featuring open drains on three sides, would require measures to avoid impacting on water quality flowing into these open drains, which flow directly into SAC waters 350m to the north. Measures to be undertaken to avoid or reduce impacts on water quality during the construction phase have not been sufficiently outlined in the application and appeal documentation.

Consequently, in the absence of such measures as part of the project, significant likely effects for the integrity of Leannan River SAC cannot be excluded.

- 7.4.17. **Water Quality at Operational Phase** - During the operational stage it is proposed that surface water from the site would be discharged to the open drain on the northern boundary after passing through a three chamber fuel interceptor. This is a standard and effective construction feature in avoiding high levels of hydrocarbon pollutants exiting a site and is not required to mitigate the potentially harmful effects of the storm water run-off from the site to Leannan River SAC. It is proposed that wastewater would be treated on site and discharged to ground. As highlighted above, the applicant has proposed a higher specification of wastewater treatment system than would normally be required based on the EPA Code of Practice in order to reduce any potential risks to the Leannan River SAC. I am satisfied that as this would be undertaken to reduce the potentially harmful effects of the development on water quality leading to Leannan River SAC this measure comprises mitigation for the purposes of AA. Having regard to the assessment above highlighting the inadequacy of the wastewater treatment proposals for the development and the likely effects for receiving waters, significant likely effects for water quality in Leannan river cannot be excluded and the potential remains for the proposed development to have significant likely effects on the integrity of Leannan River SAC in view of the site's conservation objectives, via impacts on water quality arising from the wastewater treatment proposals.

In-combination Impacts

- 7.4.18. The applicant's Ecological Report refers to planning permission for the development of a recreational facility on the adjacent lands to the northeast of the site (DCC ref. 16/51180), and concludes that this operational facility would not have in-combination effects with the subject development. I am satisfied that likely significant in-combination impacts would not arise.

Stage 1 – Screening Conclusion

- 7.4.19. The development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. The applicant has referred to previous and proposed measures for the project designed or intended to avoid or

reduce harmful effects of the project on a European Site and such measures cannot be considered at the screening stage of AA.

- 7.4.20. On the basis of the information provided with the application and the appeal, and in the absence of a Natura Impact Statement where one is required, the Board cannot be satisfied that the proposed development and the development to be retained, individually or in combination with other plans or projects, would not be likely to have a significant effect on Leannan River SAC (Site Code: 002176), or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.
- 7.4.21. Furthermore, under section 34(12) of the Planning and Development Act 2000, as amended, retention permission may not be sought for a development that requires a Natura Impact Statement or an Appropriate Assessment (Stage 2).

8.0 Recommendation

- 8.1. I recommend that retention permission and permission for the development should be refused to be granted for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. Having regard to the location of the site 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, and to National Policy Objective 19 of the National Planning Framework which, for rural areas not under urban influence, seeks to facilitate the provision of single housing in the countryside having regard to the viability of smaller towns and rural settlements, it is considered that the proposed development would contribute to the creation and expansion of a suburban pattern of development in this rural area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure, and would be contrary to National Policy Objective 19 of the National Planning Framework and Policy RH-P-2 of the Donegal County Development Plan 2018 – 2024, which aims to avoid rural housing developments leading to suburbanisation and the erosion

of the rural character of an area. The proposed development and the development to be retained would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the high density of housing in the area served by individual on-site wastewater treatment systems and the conditions on site, including the evidence of surface water ponding and soil compaction, as well as the insufficient evidence regarding the adequacy of the layers of soils and subsoils placed on site to treat wastewaters, 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 safely disposing of wastewater generated by the proposed development, without prejudicing public health and the quality of receiving waters. The proposed development and development for retention would, therefore, be contrary to the proper planning and sustainable development of the area.
3. On the basis of the information provided with the application and the appeal, and in the absence of a Natura Impact Statement where one is required, the Board cannot be satisfied that the proposed development and the development to be retained, individually or in combination with other plans or projects, would not be likely to have a significant effect on Leannan River Special Area of Conservation (Site Code: 002176), in view of the site's Conservation Objectives. In such circumstances, the Board is precluded from granting approval/permission.

Colm McLoughlin
Planning Inspector

30th July 2021