



An  
Bord  
Pleanála

## Inspector's Report ABP-310614-21

<b>Development</b>	Construction of a dwelling.
<b>Location</b>	Croaghross, Greenfort, Portsalon, Co Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2051849
<b>Applicant(s)</b>	Geraldine Moroney Friel and Joe Moroney.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Brendan and Mary McBride.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	10 <sup>th</sup> March 2022.
<b>Inspector</b>	Barry O'Donnell

## **1.0 Site Location and Description**

- 1.1. The subject site has a stated area of 0.184ha and is located at Portsalon, in the north of County Donegal. Portsalon is a village that contains a limited range of services, including a convenience store, café, golf club and a school. The village contains a substantial number of holiday homes.
- 1.2. The site is centrally located in the village, on the north side of the R246, and is accessed via a private lane that is itself accessed from the L-50322-0. The site is set on an incline the rises from south to north and from east to west. It is in an area of mixed permanent and holiday housing, which includes traditional and contemporary designs.
- 1.3. The site currently comprises of a paddock between residential properties. It is enclosed on all sides by post and wire fencing and there is a mature hedgerow along the west boundary. The east site boundary is shared with a private avenue access that leads to housing further to the north.

## **2.0 Proposed Development**

- 2.1. The proposed development entailed within the public notices comprises construction of a house, garage and sewage treatment plant.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The Planning Authority granted permission on 27<sup>th</sup> May 2021, subject to 15 No. planning conditions.

Condition No. 3 requires the existing roadside boundary along the private road to be removed along the entire road frontage of the site, replaced by a stained tanalised timber fence back planted with a native hedgerow on a line at 5m from the centreline of the road. The condition also requires an entrance of a specified width to be provided.

Condition No. 5 requires the full frontage or roadside drain to be piped with concrete pipes.

Condition No. 6 requires the area between old and new front boundaries to be soiled and seeded to a height no more than 100mm above the level of the carriageway.

Condition No. 12 requires site boundaries to be planted with semi-mature native species and that a minimum of 12 semi-mature trees should be planted within the first planting season.

Condition No. 14 contains specifications for the wastewater treatment system and polishing filter to be provided on the site.

Condition No. 15 requires payment of a financial contribution of €1,626.69 in accordance with the S48 development contribution scheme.

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

3.2.1. Planning Reports dated 25<sup>th</sup> January 2021 and 20<sup>th</sup> May 2021 have been provided.

3.2.2. The first report notes that the site lies within an established settlement and on this basis considers the proposal to be acceptable in principle. Concerns are expressed regarding the proposed layout and house design, but the Officer states that revisions can be controlled by condition. Additional information is recommended in relation to the finished floor level of adjacent houses, to inform the assessment. Concerns are also expressed regarding the proposed access layout and it is recommended that the access should be moved further north or further west. A request for additional information is also recommended regarding the proposed wastewater treatment system, where adjacent systems were not identified as part of the application. It is also recommended that an ecological report should be provided, to assist the Planning Authority's appropriate assessment screening exercise. The report recommends that additional information is sought in relation to the following aspects of the development: -

- Applicant to submit a revised site layout plan that (i) identifies wastewater treatment systems and percolation areas within 100m of the site and (ii) revised proposals for access to the site and including achievable vision lines, (iii) finished

floor levels for houses within 100m and (iv) details of the characteristics of the public/private road.

- Applicant to submit proposals for achievement of vision lines of 3m x 120m, to the near roadside edge, along local road L-50322-0.
- Applicant to submit an ecological report that considers the proximity of the site to Ballyhoorisky Point to Fanad House SAC, to assist the Planning Authority's appropriate assessment screening exercise.

3.2.3. The second report followed receipt of the additional information response. It summarises and responds to the AI response and recommends that permission be granted, subject to 15 No. conditions, which are consistent with the Planning Authority's decision.

3.2.4. A separate appropriate assessment screening report has also been provided, which determines that appropriate assessment is not required.

3.2.5. Other Technical Reports

The Planning Report indicates that the **Roads Department** was consulted on the application but did not make a submission.

### 3.3. Prescribed Bodies

3.3.1. The HSE Environmental Health Office made submissions on 27<sup>th</sup> January 2021 and 25<sup>th</sup> May 2021, which outline no objection to the development subject to recommended planning conditions.

3.3.2. Irish Water made a submission on 5<sup>th</sup> February 2021, which outlines no objection to the development subject to recommended planning conditions.

3.3.3. The Planning Report indicates that An Taisce and the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DAU) were consulted on the application but did not make a submission.

### 3.4. Third Party Observations

3.4.1. A single third-party letter of observation was received, the issues raised within which can be summarised as follows: -

- Proposed use of the house.
- Impact of holiday home development and population decline in the area.
- Proposed finished floor level.
- Proximity of proposed garage to access road.
- Visibility from the proposed site access.
- Proximity of proposed septic tank system to other systems in the vicinity.
- Proliferation of septic tank systems in the area.

## 4.0 Planning History

- 4.1.1. I did not encounter any previous planning records pertaining to the site.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. Chapter 2A of the Donegal County Development Plan 2018-2024 contains the Core Strategy and Table 2A.3 'Settlement Structure' identifies Portsalon as a Layer 3 settlement, 'Rural Towns and Open Countryside'.
- 5.1.2. Table 2A.6 'The Core Strategy Table' provides an allocation of 1,863 houses to the Layer 3 settlements and the accompanying notes to the Core Strategy Table state that *'no prescribed residential zonings across layer 3 in order to provide robustness and flexibility in the approach. Other policies of the Plan will guide the sustainable and incremental growth of one-off housing in open countryside and housing in rural towns identified as layer 3.'*
- 5.1.3. Part C of the development plan contains interactive mapping in relation to the layer 3 settlements and the subject site is identified as falling within the settlement boundary of Portsalon. Chapter 15 of Part C includes the following written objectives for the layer 3 settlements: -

- Create compact urban forms, protect the rural character of adjoining rural areas, and delineate the geographical extent of urban and rural policies of this Plan by setting an outer development envelope/boundary for each settlement.
- Comply with the Core Strategy in terms of the provision of housing units by identifying a specific amount of residential land for each settlement.
- Ensure that new residential development is located in close proximity to local services, infrastructure and amenities and takes place in a sequential manner outwards from the settlement core.
- Create vibrant, consolidated, and accessible town centres which are the core of retail, commercial, cultural and community life within the settlements.
- Provide an adequate level of recreational and environmental amenity by protecting existing open/green spaces, reserving sufficient land for amenity purposes and protecting pedestrian linkages.
- Reserve sufficient land for educational, community and tourism purposes in appropriate locations.
- Protect specific development opportunities through the designation of opportunity sites.
- Provide for future road development by protecting infrastructural corridors.

5.1.4. Other relevant housing policies of the development plan include: -

**TV-P-2:** It is the policy of the Council to encourage proposals for small scale residential development, including social housing schemes in towns and villages that will contribute to revitalisation and renewal subject to other policies of this Plan including Part C and subject to the proper planning and sustainable development of the area.

**UB-P-12:** It is the policy of the Council both to protect the residential amenity of existing residential units and to promote design concepts for new housing that ensures the establishment of reasonable levels of residential amenity.

5.1.5. According to Map 7.1.1 'Scenic Amenity' the site is located in an area of 'High Scenic Amenity'. Section 7.1.1 discusses landscape designations and for areas of High Scenic Amenity it states that these areas '*are landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a*

*fundamental element of the landscape and identity of County Donegal. These areas 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.'* Policy NH-P-7 is relevant to the development. It states: -

**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.

## **5.2. National Planning Framework**

- 5.2.1. National Policy Objective 6: *'Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.'*
- 5.2.2. National Policy Objective 11: *'In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.'*

## **5.3. Ministerial Guidelines**

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)

- 5.3.1. The Guidelines define a smaller town or village as having a population ranging from 400 to 5,000 persons. In these locations, Section 6.3(a) and (b) state that development should be plan-led and that new development should contribute to a compact urban form.

Quality Housing for Sustainable Communities (2007)

- 5.3.2. The Guidelines identify principles and criteria that are important in the design of housing and highlight specific design features, requirements and standards.

#### **5.4. Natural Heritage Designations**

- 5.4.1. The site is not located within a European site. The closest such site is Ballyhoorisky Point to Fanad Head SAC (Site Code 001975) which is c.325m east.

#### **5.5. EIA Screening**

- 5.5.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.5.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
  - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.
- 5.5.3. The subject development comprises a proposed construction of a house, garage and sewage treatment plant on a site of 0.184ha. It falls well below both of the applicable thresholds for mandatory EIA, as set out above.
- 5.5.4. In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development, it is considered that there is no real likelihood of 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.

### **6.0 The Appeal**

#### **6.1. Grounds of Appeal**

- 6.1.1. The grounds of appeal can be summarised as follows: -



- Principle of development
  - Portsalon is designated by the development plan as a structurally weak area but continues to experience population decline.
  - Portsalon has experienced significant population decline over recent years and planning policies have not controlled the status of applicants or ensured that houses permitted are occupied by local families.
  - The development plan housing policy provides for a settlement framework for Portsalon, effectively making it a village but this policy has not resulted in an increase in permanent households. Portsalon should be designated as a rural area, like the remainder of the Fanad peninsula.
  - Portsalon and its hinterland are dominated by holiday homes and the proposed design is reflective of these houses. There are 7 houses within 100m of the site, all of which are used as holiday homes.
  - The density of residential development in the area is inappropriate and is akin to a built-up area. The provision of another house will not contribute to regeneration of the community.
- Siting, location and design
  - Concerns raised in submissions to the Planning Authority regarding finished floor levels have not been adequately addressed. The identified finished floor level is significantly in excess of the finished floor level of the adjacent houses to the west, which are all at least 3m below the proposed finished floor level. This issued needs to be carefully considered by the Board.
  - The proposed garage is excessively close to the access road to the appellant's property. There is space elsewhere within the site to accommodate this element of the development.
  - The proposal is substandard in terms of siting and design and does not follow the principles of the Planning Authority's own design guide.
- Traffic
  - The access lane cannot cater for two-way traffic.

- A low stone wall and grass verge on the west side of the access lane have not been properly detailed on the site layout drawing. The verge and wall are within the appellant's ownership.
- Achievable vision lines do not satisfy the minimum standard set out in the development plan and give rise to a traffic hazard. It is contended that, without modification of the land/vegetation within the appellant's ownership, no adequate vision line can be achieved to the north. No approach to discuss such alteration was made by the applicant.
- Public health
  - There are 7 houses within 100m of the site, all with separate septic tank systems.
  - There are 28 buildings within 150m of the proposed house.
  - The Planning Authority has allowed an urban residential density to develop in this small coastal settlement, without any basic services. A wastewater treatment network is clearly lacking in the area and it is understood there are no plans to construct one.
  - A site layout drawing provided at the further information stage does not identify the appellant's percolation area correctly and is effectively shown as crossing their driveway.
  - It is unclear from the information provided whether compliance with the EPA Code of Practice can be achieved.
  - Regardless of compliance with the Code of Practice, there is an issue with the proliferation of septic tanks in the area, which cumulatively may present a risk to soils and groundwater.
- The Board is requested to refuse permission.

## 6.2. Applicant Response

6.2.1. A first party response to the appeal was submitted on behalf of the applicant, by DML Architecture & Building Surveying, on 16<sup>th</sup> July 2021

- Principle of development

- The applicant Geraldine Moroney Friel is from the townland of Cashelpreghan, approx. 2.2km from the site. She bought the site 37 years ago, with a view to building a home when she reached retirement age and now wishes to return home for her retirement years.
- The applicant complies with development plan policy in respect to housing need, links to the area and requirement to build on family land.
- The appellant is contradictory in suggesting that local families are not occupying permitted housing in the vicinity.
- Comments from the appellant regarding the proposed design are merely an opinion and are disagreed with.
- Siting and design
  - A temporary benchmark of 103.1m floor level is proposed. It is shown on the site layout drawing that the house will be approx. 0.360m above existing ground level.
  - Adjacent housing has higher and lower floor levels, as they are sited in various positions above and below the subject site.
  - The appellant's suggestion regarding the finished floor level is an opinion.
- Traffic
  - The house will be accessed by a new entrance constructed to the front boundary, at the west side. This was required by the Planning Authority.
  - The private cul-de-sac serves 2 houses and is in satisfactory condition currently.
- Public Health
  - The development is to be served by an on-site effluent treatment system, which complies with the requirements of the EPA Code of Practice and which has been deemed accepted by the Environmental Health Office.
  - The appellant's view is their opinion and is not supported by evidence.
- The proposal has been deemed to be acceptable by the Planning Authority. The Board is requested to uphold the decision to grant permission.

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

6.3.1. The Planning Authority made a submission on 23<sup>rd</sup> July 2021, the contents of which can be summarised as follows: -

- Planning policies are ineffective at controlling the balance between residences and holiday homes
  - The site is within the settlement framework of Portsalon and policy UB-P-24 applies. A condition has been attached to ensure that the dwelling cannot be used as a holiday home.
- Local school closure
  - Overarching objectives of the development plan seek to direct development to within settlements and with a view to ensuring sustainable use of local services. The provision of a house within the settlement is in accordance with proper planning and sustainable development.
- Proliferation of effluent treatment plants
  - The HSE Environmental Health Office has assessed the proposed development and has been made aware of other systems in the vicinity and has not objected to the development.
- The proposed finished floor level is acceptable given the site topography. It is approximately 300mm above the level of undisturbed ground in the vicinity of the site and is well below the level of houses to the north.
- Traffic
  - The site lies within the 50km/h speed limit. The proposed access is acceptable in view of the achievable vision lines, the geometry of the road layout and limited traffic flows on the route

### **6.4. Observations**

6.4.1. None.

## 6.5. Further Responses

6.5.1. None.

## 7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal, the main planning issues in the assessment of the proposed development are as follows:

- Principle of development;
- Layout and residential amenity;
- Road Safety, access and parking;
- Drainage;
- Appropriate Assessment.

### 7.2. Principle of development

- 7.2.1. The subject site is located within the settlement boundary of Portsalon and although the development plan does not provide land-use zonings for the lands within the boundary, I note that it is identified as a Layer 3 settlement and is allocated a proportion of planned housing as part of the Core Strategy, for the development plan period.
- 7.2.2. I also note that in reference to the absence of zonings, the accompanying notes to the Core Strategy Table state that *'no prescribed residential zonings across layer 3 in order to provide robustness and flexibility in the approach. Other policies of the Plan will guide the sustainable and incremental growth of one-off housing in open countryside and housing in rural towns identified as layer 3.'*
- 7.2.3. The appellant expresses concern regarding the pattern of development at Portsalon, in particular the extent of holiday homes in the area and suggests that the area should be reclassified. This is not a matter which the Board can resolve in its consideration of this appeal, which falls to be considered against existing planning policies. I would also note in this regard that the applicant states that the house is to be occupied as a permanent retirement home and not as a holiday home.

- 7.2.4. Having given consideration to the planning context, I am satisfied that the proposed development is consistent with the development plan's strategy for the development of Portsalon including policy TV-P-2 and is acceptable, subject to consideration of other issues as discussed below.

### **7.3. Layout and residential amenity**

- 7.3.1. The proposed house has a traditional bungalow design, with projecting bay elements along the front elevation. It has a stated floor area of 121.66sqm, a stated finished floor level of 360mm above existing ground level and a stated ridge height of 5.32m from ground level.
- 7.3.2. The Planning Authority expressed concerns regarding the proximity of the house to the eastern site boundary, the location of the proposed garage and the mix of fenestration styles on the front elevation. It was considered appropriate to secure amendments to the proposal in relation to each of these aspects, through condition, as part of a grant of permission.
- 7.3.3. The appellant expresses concern regarding the proposed siting and design, the proximity of the garage to their property and the proposed finished floor level of the house.

#### *Proposed house*

- 7.3.4. I have given consideration to the proposed internal layout of the house and note that it is adequately sized, in accordance with the recommendations of the *Quality Housing for Sustainable Communities* (2007) guidelines, as referenced by the development plan.
- 7.3.5. Having given consideration to the proposed layout, I am satisfied that the house is adequately located within the site. I agree with the Planning Authority, that the proposed garage is very close to the site boundary and recommend that it should resited west of the house, should the Board decide to grant permission.
- 7.3.6. I share the Planning Authority's concerns regarding the design of the front elevation of the house. The varied bay designs in my opinion lead to visual clutter and I consider that a single, flat-roof bay design should be incorporated for both projecting elements and the parapet element should be removed, in order to simplify the

design. I recommend a condition be attached to this effect, should the Board decide to grant permission.

Neighbouring residential properties

- 7.3.7. Given its single storey design, the proposed house will not result in overlooking of neighbouring properties. Similarly, no issues regarding overshadowing or overbearance arise.
- 7.3.8. Regarding the issue of the finished floor level, I note that the site layout drawing provided at the additional information stage identifies the proposed house as having a finished floor level 1.85m above that of the west-adjoining house and 3.9m above that of the south-west adjoining house. I did not observe such noticeable levels differences on my site visit, particularly for the west-adjoining house and I note that the elevation drawings identify the proposed FFL as being 360mm above ground level, which I consider to be acceptable. I am satisfied from the information available to me and from my on-site observations that the relationship of the proposal to adjacent houses is acceptable.

**7.4. Road Safety, access and parking**

- 7.4.1. Site access proposals were revised at the additional information stage. The site access is now proposed at the south-west corner, with access to be taken from an existing private access that is itself accessed from a forked junction of the L50322-0.
- 7.4.2. I note that there appears to be an error on the site layout drawing, whereby the extent of land up to the private access to north-adjoining housing is included within the red line application site boundary, but the drawing identifies the site boundary as a post and wire fence which I observed on my site visit is set back from this access by c.2m. The appellant asserts control over the grass verge that flanks the east site boundary and I note that the applicant does not propose works along this grass verge.
- 7.4.3. The appellant expresses concern regarding the ability of the L50322-0 to accommodate two-way traffic and states that achievable vision lines from the site access do not satisfy the minimum standard set out in the development plan, giving rise to a traffic hazard. The appellant also states that adequate vision to the north

cannot be achieved without modification of the land within their ownership that flanks the east boundary of the site.

7.4.4. I didn't encounter any speed limit signs in the area of the site on my site visit, but the practical speed limit for the L50322-0 is likely to be low, in view of the single lane width of the road and the number of access points taken from it. I note in this regard that a traffic assessment was submitted at the additional information stage, which established the 85<sup>th</sup> percentile design speed of 22km/h.

7.4.5. Achievable visibility splays at the junction of the L50322-0 are outlined on drawing No. 0047/04/21 (Traffic Assessment Drawing), which was provided at the additional information stage. It identifies that the following splays can be provided: -

- 0m x 50m northward, along the private access to north-adjoining housing,
- 0m x 27m northward, along the L50322-0, and
- 0m x 48m southward along the L50322-0.

7.4.6. Visibility from the point of the proposed site access is limited but is in my view acceptable in view of the fact that this part of the private access serves one other property and involves very limited traffic flows.

7.4.7. Regarding visibility at the point of the forked junction, whilst drawing No. 0047/04/21 identifies that limited visibility can be provided northward along both the private access and along the L50322-0, such visibility involves a 0m 'X' distance, meaning that a car will be practically required to enter the junction in order to attain this limited view. Section 4.4.5 of the *Design Manual for Urban Roads and Streets* provides guidance in relation to the design of visibility splays and it advises that an 'X' distance of between 2m-2.4m should be used. It states that a reduced 2m distance may be used in difficult circumstances, where speeds are low and flows on the minor arm are low, and it advises of the practical issue presented by this reduced 2m distance stating thus: -

*“the use of a 2.0 metre X distance may result in some vehicles slightly protruding beyond the major carriageway edge, and may result in drivers tending to nose out cautiously into traffic.”*



- 7.4.8. The Planning Authority initially requested demonstration of sightlines of 3m x 120m in both directions at the junction of the L50322-0, as part of the additional information request, but subsequently deemed the proposed sightlines to be acceptable.
- 7.4.9. The layout depicted on drawing No. 0047/04/21 is consistent with my on-site observations, where I noted that visibility northward from the junction is heavily restricted by the presence of roadside hedging / vegetation. I note that drawing No. 0047/04/21 does not identify the presence of a low stone wall and vegetation / grass verge at the south-east corner of the site, which together measure c.2m high and which the appellant states are within their ownership. This boundary arrangement heavily restricts northward visibility along the private access to north-adjointing housing, reducing visibility to an estimated 5-10m from the centre of the junction. Hedging along the L50322-0 also restricts north-eastward visibility from the junction.
- 7.4.10. Having given consideration to the matter, I consider the proposed sightlines are unacceptable and may contribute to the creation a traffic hazard, by reason of the intensification of the use of the private access that requires drivers to enter the junction in order to attain visibility. Moreover, from the information available to me, the provision of improved/adequate sightlines likely requires access to third party lands and thus cannot be controlled by condition, should the Board decide to grant permission. A refusal of permission is thus recommended on this basis.

## **7.5. Drainage**

### Foul Drainage

- 7.5.1. The development includes the provision of a packaged treatment plant and polishing filter. The Site Suitability Assessment Report identifies the category of aquifer as 'poor', with a vulnerability classification of 'high'. Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice Domestic Wastewater Treatment Systems identifies an 'R1' response category i.e., acceptable subject to normal good practice.
- 7.5.2. A trial hole with a depth of 2m recorded 300mm of silt loam and 1700mm of silty, clayey/gravelly sand and some cobbles and small stones. The trial hole evaluation sheet states that the water table was encountered at a depth of 1.9m. In relation to the percolation characteristics of the soil, a T-test value of 44.69 min/25mm was returned. The Report concludes that the site is suitable for the installation of a packaged wastewater treatment system and polishing filter.

- 7.5.3. Having regard to the site percolation test results, I consider it has been demonstrated that the site can accommodate a wastewater treatment system. I note that the HSE Environmental Health Service did not object to the development and provided a recommended condition regarding the specification of the system to be provided.
- 7.5.4. I note that the appellant expresses concern as to whether compliance with the EPA Code of Practice can be achieved. Having given consideration to the Code of Practice, I am satisfied from the information available to me that the system can be accommodated on the site and is shown to observe required separation distances from site boundaries and adjacent property.

#### Surface water drainage

- 7.5.5. Surface water is identified on the site layout drawing as draining to an existing drain adjacent to the south-east corner of the site, which itself drains to the public surface water drain at the junction with the R246. Other details of the surface water drainage system have not been provided.
- 7.5.6. I note that the Planning Authority did not object to the proposed drainage system and would recommend that should the Board decide to grant permission, a condition be attached requiring the applicant to agree the detailed layout of this system on the site.

### **7.6. Appropriate Assessment**

#### Appropriate Assessment Screening

##### *Compliance with Article 6(3) of the Habitats Directive*

- 7.6.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

##### *Background on the Application*

- 7.6.2. The applicant submitted an *Ecological Report*, prepared by Greentrack Environmental Consultants. It provides a description of the proposed development, identifies European sites within a 15km potential zone of influence and identifies potential impacts in relation to Ballyhoorisky Point to Fanad Head SAC (Site Code 001975).
- 7.6.3. Having reviewed the appeal documents provided and submissions, I am satisfied that there is adequate information in relation to the European sites to allow for a complete

examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

#### Need for Stage 1 Appropriate Assessment Screening

- 7.6.4. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken on any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives.
- 7.6.5. The proposed development is not directly connected with or necessary to the management of a European site and accordingly is subject to the provisions of Article 6(3).

#### *Brief description of the development*

- 7.6.6. The development is described at Section 1.1.1 of the Ecological Report and also at Section 2 of this Report. In summary, permission is sought for construction of a house, garage and sewage treatment plant. The site has a stated area of 0.184ha and consists of improved grassland that is located within the settlement boundary for Portsalon. It is accessed from a private lane that connects to the L50322-0. Foul drainage is proposed to drain to a septic tank and percolation area and surface water is proposed to drain to an existing drain that is adjacent to the south-east site boundary and which itself connects to the public surface water network on the R246.
- 7.6.7. Taking account of the characteristics of the proposed development, in terms of its location and the scale of works, I consider the following aspects of the development require examination:
- Impact on water quality within a European site arising from surface water discharges from the site containing suspended solids and/or pollutants.
  - Impact on water quality within a European site arising from the treatment of effluent on the site.

#### Submissions and Observations

- 7.6.8. The submissions from the appellant, applicant and Planning Authority are summarised as Section 6 of my Report.

#### European Sites

7.6.9. The site is not located within a European site. The closest such site is Ballyhoorisky Point to Fanad Head SAC (Site Code: 001975) which is c.325m east.

7.6.10. The Ecological Report identifies a number of additional European sites within the 15km potential zone of influence but does not consider them further, in view of the distance between the sites and the absence of source-pathway-receptor connectivity. The additional sites are: -

- North Inishowen Coast SAC (Site Code 002012), 4.8km east,
- Lough Swilly SAC (Site Code 002287), 9.3km south-east,
- Lough Swilly SPA (Site Code 004075), 12.3km south-east,
- Mulroy Bay SAC (Site Code 002159), 4.8km west,
- Greers Isle SPA (Site Code 004082), 5.6km west,
- Kindrum Lough SAC (Site Code 001151), 5.3km north-west,
- Fanad Head SPA (Site Code 004148), 4km north,
- Horn Head to Fanad Head SPA (Site Code 001494), 3km south-east,
- Lough Nagreany Dunes SAC (Site Code 000164), 8.4km west,
- Tranarossan and Melmore Lough SAC (Site Code 000194), 10.5km north-west,
- Sheephaven SAC (Site Code 001190), 11.4km west

7.6.11. In view of the absence of any potential source-pathway-receptor connection to these sites and the distance between the subject site and these sites and having regard to the smallscale nature of the development, I am satisfied that there is no potential for significant effects on European sites other than Ballyhoorisky Point to Fanad Head SAC.

7.6.12. A summary of Ballyhoorisky Point to Fanad Head SAC is presented in the following table.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)
<u>SAC</u>		

Ballyhoorisky Point to Fanad Head SAC (Site Code 001975)	<ul style="list-style-type: none"> <li>• Perennial vegetation of stony banks,</li> <li>• Vegetated sea cliffs of the Atlantic and Baltic coasts,</li> <li>• Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea,</li> <li>• Hard oligo-mesotrophic waters with benthic vegetation of Chara spp.</li> <li>• Narrow-mouthed Whorl Snail,</li> <li>• Slender Naiad</li> </ul>	c.0.325km
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7.6.13. In respect of the Screening Assessment, the Ecological Report concludes: -

*“Having established the assessment criteria, the impacts associated with the proposed development and associated works on these Natura 2000 sites, the proposed development has been assessed against all the qualifying interests. This screening matrix has established that the proposed project will not have any significant negative effect on the qualifying interests of the Ballyhoorisky Point to Fanad Head SAC.”*

Impact on water quality within a European site arising from surface water discharges from the site containing suspended solids and/or pollutants.

7.6.14. The site is situated on an incline, above the level of the coast which is approx. 200m south. There is potential for surface run-off from the site during the construction phase that contains suspended solids or pollutants, but I consider the potential for impacts on the European site is very low, in view of the separation distance between sites and the presence of substantial built form elements in the intervening space.

7.6.15. For the operational phase surface water run-off is proposed to drain to an existing drain that is adjacent to the south-east site boundary and which itself drains to the surface water drain on the R246. This drain is shown on the site layout to drain in a

south-westerly direction, away from the European site. Surface water drainage will therefore not have any effect on water quality within the European site.

Impact on water quality within a European site arising from the treatment of effluent on the site

7.6.16. Foul water is proposed to be treated within a packaged treatment plant and polishing filter, which are to be provided to the front of the house. The EPA Code of Practice does not specify an absolute minimum setback distance from a heritage feature or NHA/SAC/SPA but I note that it requires a setback of 50m from a lake or foreshore should be maintained. Such a distance is significantly exceeded in this instance.

7.6.17. A Site Suitability Assessment Report was submitted with the application and it identifies that the site is suitable for installation of a packaged treatment plant and polishing filter. Where such site-specific testing has shown the site to be suitable for the treatment of foul waste in this manner and given the separation distance between the system and the SAC, I am satisfied that the potential for likely significant effects on water quality within the SAC is low and can be excluded at this stage.

*Mitigation measures*

7.6.18. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

*Screening Determination*

7.6.19. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site No. 001975, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

7.6.20. This determination is based on the following:

- The smallscale nature of the development, which does not require specialist construction methods,
- The absence of a source-pathway-receptor connection between sites, and

- The separation distance between the subject site and the European sites.

## 8.0 Recommendation

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

## 9.0 Reasons and Considerations

The proposed development is located along a private laneway which, by reason of its alignment and relationship to adjacent third-party lands, incorporates inadequate visibility splays that require drivers to enter the junction of the L-50322-0 in order to attain adequate northward visibility. The proposed development, which would intensify the use of the laneway, is contrary to the requirements of Appendix 3 'Development Guidelines and Technical Standards' of the Donegal County Development Plan 2018-2024 and advice provided within the *Design Manual for Urban Streets* (2019) and would be likely to endanger public safety by reason of a traffic hazard and would therefore be contrary to the proper planning and sustainable development of the area.

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Barry O'Donnell

Planning Inspector

24<sup>th</sup> March 2022