



An  
Bord  
Pleanála

## Inspector's Report ABP311109-21

### Development

Is é Beasd San Fhorbairt Ná Teach  
Cónaithe Le Garaiste Baile Ceangailte  
agus Corás Cóireala Searachais.  
Béidh Raiteas Tionchar Natura (NIS)  
Mar Pháirt Don Iarratas.

### Location

Mínacatan, Inbhear, Co. Dhún Na  
NGall.

### Planning Authority

Donegal County Council.

### Planning Authority Reg. Ref.

2151099.

### Applicants

Orlaith MacSuibhne and Pól Árnóide.

### Type of Application

Permission.

### Planning Authority Decision

Grant.

### Type of Appeal

Third Party -v- Grant.

### Appellant

Daniel Arnold.

### Observers

None.

### Date of Site Inspection

6<sup>th</sup> October, 2021.

### Inspector

Paul Caprani.

## Contents

1.0 Introduction .....	3
2.0 Site Location and Description .....	3
3.0 Proposed Development .....	4
4.0 Planning Authority's Decision .....	4
4.1. Documentation Submitted with the Application .....	4
5.0 Planning History.....	6
6.0 Grounds of Appeal.....	7
7.0 Appeal Responses.....	8
8.0 Development Plan Provision.....	<b>Error! Bookmark not defined.</b>
9.0 Planning Assessment .....	15
10.0 Conclusions and Recommendation.....	21
11.0 Decision .....	21
12.0 Reasons and Considerations .....	21

## **1.0 Introduction**

ABP311109-21 relates to a repeat application for the construction of a dwellinghouse at a site at Minactain, Inver, County Donegal. Donegal County Council issued notification to grant planning permission for the proposed development and this was the subject of a third-party appeal. The Board will note that this is essentially a repeat application for a development which was refused planning permission by An Bord Pleanála under Reg. Ref. 306050-19 in May, 2020.

## **2.0 Site Location and Description**

- 2.1. The subject site is located in south-west Donegal in the townland of Meenacahan off the R262 which links the N56 to the south near the town of Inver with the N56 to the north between the towns of Ardara at Glenties. The subject site is located on the eastern side of the R262 and has a stated area of 0.636 hectares.
- 2.2. The application site is located to the rear of an existing single storey cottage which fronts directly onto the R262. The site is elevated above the property to the west. It comprises mainly of scrubland and grass vegetation and rushes. Notwithstanding the fact that the site is elevated the site was substantially sodden and wet under foot at the time of site inspection. The presence of drains have been noted in and around the area.
- 2.3. A newly constructed dormer bungalow is located to the immediate south of the site. It appears from the drawings submitted that the bungalow was owned by the applicants' brother. The applicants' parents house with associated sheds are located on lands further south-west to the subject site. The applicants' uncle's house is located to the north-west of the site fronting onto the R262. The front of the site is setback c.45 metres from the public road. The applicants proposed dwelling seeks to share the existing access serving his brother's dwelling to the south, it veers northwards to serve the proposed dwelling. The site has a length of approximately 155 metres and a depth of between 40 and 50 metres. The site incorporates a downward slope from east to west towards the public road. A number of telegraph poles traverse the site.

### **3.0 Proposed Development**

- 3.1. Planning permission is sought for the construction of a single storey house together with a side garage to the rear. The house has a gross floor area of 189.5 square metres while the garage area which is attached to the main dwellinghouse via a utility room and boiler has a floor area of 62.6 square metres. The house is to face westwards towards the road and is to accommodate living and dining accommodation together with a sunroom in the northern portion of the layout. two bedrooms, an office and a bathroom are provided in the southern portion of the house. The dwelling rises to a ridge level of 6.476 metres and is to incorporate a white plaster render finish. The dwelling is to be located to the front, lower part of the site, c. 65 metres from the rear of the cottage to the west fronting directly onto the road and c.85 metres from the road itself.

### **4.0 Planning Authority's Decision**

Donegal County Council issued notification to grant planning permission for the proposed development subject to 16 conditions.

#### **4.1. Documentation Submitted with the Application**

- 4.1.1. A site characterisation report and site suitability assessment was submitted. The excavated trial hole on site recorded the depth of a water table at 1.45 metres below ground level. The percolation test recorded a T test of 58 and a P test of 44.
- 4.1.2. The report notes that the conditions encountered indicates that the site does not have the characteristics necessary to accommodate a conventional septic tank system or percolation area. It is therefore proposed to install a septic tank (primary treatment) in conjunction with an adequately sized pumped chamber to evenly distribute partly treated effluent over a sand polishing filter with gravity discharge to two puraflo peat pods before eventually discharging to groundwater.
- 4.1.3. Also submitted was a Natura Impact Statement. It details the Natura 2000 sites in the vicinity which include the Lough Nillan Bog SPA and the Lough Nillan Bog SAC both of which are located between 50 and 60 metres to the west of the subject site. It notes that there are several hydrological source – receptor pathways identified

between the development and the Natura 2000 site. A series of mitigation measures are set out in the NIS to ensure that no significant adverse impacts on the integrity of the Natura 2000 sites arise. With the incorporation of the mitigation measures, the report concludes that there will be no significant adverse effects on the integrity of any European sites as a result of the development.

- 4.1.4. A letter was also submitted from a local councillor stating that the applicant is a native of the area and satisfies the criteria for rural housing policies set out in the Donegal County Development Plan. It is also requested that the Planning Authority consider the application favourably.
- 4.1.5. A letter of objection was submitted by the current appellant, the contents of which have been read and noted.
- 4.1.6. The planner's report sets out details of the site location and description, the proposed development and the observation contained on file. It is noted that the Board refused planning permission for a similar application on the subject site for three reasons (see Planning History section below).
- 4.1.7. It is noted that the question of need was assessed in the previous appeal on site and it was accepted that the applicant meets the rural housing criteria set out in the Plan. It is considered that the design of the dwelling is in keeping with those in the vicinity of the site. It is considered that the siting of the dwelling permits the formation of a cluster of residential development for permanent use by family members.
- 4.1.8. With regard to access arrangements there is no objection from the Area Roads Engineer. It is noted that the Inspector in the previous appeal (ABP 306050) did not consider traffic safety as a reason for refusal. However, this reason was included by the Board. However, it is considered that the proposal does not materially intensify traffic movements at the entrance. It is considered that the proprietary works to be incorporated to facilitate an on-site wastewater treatment plant is sufficient so as the proposal would not be prejudicial to public health. Finally, in relation to appropriate assessment it is concluded that on the basis of objective scientific information, that the proposed development will not, individually or in combination with other plans or projects, have a significant effect on the European site. On the basis of the above the planner's report recommends that planning permission be granted for the proposed development.

## 5.0 Planning History

5.1. Details of various planning applications on the subject site and what appears to be sites in the immediate vicinity are set out in the planner's report. One appeal file is attached and is particularly pertinent to the current application before the Board. Under ABP306050 planning permission was sought for the erection of a dwellinghouse with a garage on the subject site. The application was accompanied by an NIS. Donegal County Council issued notification to grant planning permission for the proposed development. However, this decision was overturned by An Bord Pleanála for three reasons which are set out in full below.

- 1. Having regard to the soil conditions on site, the Board is not satisfied on the basis of the submissions made in connection with the planning application and appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.*
- 2. On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out, the Board is not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European sites 004110 and 000165 (Lough Nillan Bog SPA and SAC) in view of the site's conservation objectives. In such circumstances the Board is precluded from granting planning permission.*
- 3. Having regard to the location of the access/egress point onto the regional road served by a continuous white line and where the speed limit of 80km/h applies, it is considered that the introduction of an additional dwelling would result in a material intensification of traffic movements at this access/egress point onto the public road network, which would endanger public safety by reason of a traffic hazard. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

This decision was dated May 18th, 2020.

## **6.0 Grounds of Appeal**

- 6.1. The decision of Donegal County Council to issue notification to grant planning permission was appealed by Daniel Arnold the occupant of the dwelling to the north-west of the site fronting onto the R262.
- 6.2. It is noted that vision lines are required to the south and north in order to secure the outcome of any successful planning application. Dangers in relation to sightlines were flagged by the Planning Officer in respect of a previous application on site 18/51375. This resulted in a recommendation to refuse planning permission which subsequently led to the application being withdrawn. It appears that Donegal County Council appear to have waived the requirement for vision line letters to the north of the site notwithstanding the initial Planning Officer's concerns. Condition No. 3 of the planning permission requires that prior to the commencement of development vision lines of 160 metres are provided. The appellant has not given consent to permit the applicant to maintain vision lines in an northerly direction from the proposed access therefore the vision lines cannot be achieved. The intensification of the existing access will exacerbate dangers at this location. There are also other junctions in the vicinity which give rise to a traffic hazard. It is also stated that this entrance serves commercial sheds that do not have the benefit of planning permission. The appellant does not give permission to incorporate the required sightlines over his property to the north of the entrance.
- 6.3. It is also noted that the inspector's report in respect of ABP306050-19 express concerns that the proposed development constitutes backland development, and it is suggested that the proposal to move the building slightly forwards towards the rear of the existing houses does nothing to address the backland nature of the development proposed. It is noted that Donegal County Council have refused numerous planning applications on the basis of inappropriate backland development.
- 6.4. It is also stated that the appellant has a well which is located downhill from the proposed development and therefore pollution is obviously a distinct possibility. On the basis of the above, it is argued that Donegal County Council have failed to properly assess the planning application and that planning permission should be refused for the proposed development. Details of existing rights of way and the

location of the well in the context of the proposed dwellinghouse are indicated in maps and aerial photographs attached.

## **7.0 Appeal Responses**

### **7.1. Response on behalf of the Applicant**

- 7.1.1. A response was submitted on behalf of the applicant by Joe Bonner Planning Consultant. The response is set out below.
- 7.1.2. It is stated that it has been accepted by the Board that the applicant in this instance meets the housing need criteria.
- 7.1.3. It is argued and in respect of sightlines, that this issue was not referred to in the previous inspector's report (ABP 306050) and that the Board did not provide any actual justification for refusing planning permission on the basis of traffic.
- 7.1.4. Furthermore, the appellant has failed to address the fact that he previously gave consent to the applicants' brother to achieve clear and unobstructed sightlines and this has been implemented and therefore the sightlines are legally permitted to be maintained.
- 7.1.5. With regard to the issue of material intensification of use of the access, it is noted that the applicants currently live in the adjacent family home. No evidence was provided by the Board to demonstrate how a material intensification of traffic movements at a legitimately constructed access would occur. It is argued how can somebody drive in and out of one entrance that is proximate to another entrance be a material intensification. It is further noted that the Board granted planning permission for seven wind turbines only 2 kilometres away in the exact same regional road. This windfarm gave rise to a number of HGV movements and the inspector's report considered that the HGV movements associated with the windfarm would be acceptable in terms of traffic safety and convenience.
- 7.1.6. It is stated that a refusal of permission for a house at this site will not stop the applicant from building a home in a rural area which will generate traffic at some other site. In terms of trip generation etc. it is more appropriate that the applicants live close to the family home which will not be reliant on private cars for business etc.



- 7.1.7. In relation to the issue of backland development, it is noted that this was considered in the previous inspector's report and notwithstanding the reference to this reason for refusal in the inspector's report the Board did not adopt this matter as a reason for refusal.
- 7.1.8. With regard to the wastewater treatment plant and the NIS, it is stated that a comprehensive and successful land drainage upgrade programme has been completed by the clients in order to ensure that an effluent treatment plant can adequately function on the subject site. It is proposed to further remove less suitable soils and subsoils throughout the proposed percolation field and replace it with imported and more suitable soils onto the site. The current proposal for a septic tank instead of a secondary wastewater treatment plant is effectively a completely different proposal than that considered by the Board and demonstrates that soil conditions have changed on site. As such, it successfully addresses the inspector's concerns in relation to the previous application.
- 7.1.9. Reference is made in Section 6.7 to the Code of Practice in respect of site improvement works. It notes that the importation of suitable soils and subsoils for the construction of any component of the percolation area may be deemed suitable for discharge to ground. It is argued that the soil importation works do not constitute heavily engineered solutions to accommodate a proprietary wastewater treatment plant.
- 7.1.10. While the NIS has been updated the findings and conclusions in the document have not changed from that from the previous NIS submitted with the earlier application.
- 7.1.11. It is also suggested that there are precedent solutions where a sewage holding tank was permitted in the village of Burtonport (ABP308382-20) notwithstanding the fact that this holding tank was a similar distance from the SAC in question.
- 7.1.12. It is stated that the public well has not been used as a source of drinking water since the public watermain was installed in the area in 2001. Since this date all houses in the area including the appellant's house were connected to the public water supply. Photographs of the well are attached. Furthermore, the distance between the well and the percolation area is over 100 metres which is more than double the requirements set out in the EPA's Code of Practice.

7.1.13. On the basis of the above, the applicants request that the Board reject the grounds of the third party appeal and grant planning permission for the proposed development.

## **7.2. Donegal County Council's Response to the Grounds of Appeal**

7.2.1. With regard to the vehicular entrance/traffic safety issue it is noted that the applicant currently resides with his parents and his family in the existing dwelling and makes use of the entrance. The argument of intensification cannot therefore be substantiated.

7.2.2. It is argued that a Natura Impact Statement was prepared by a suitably qualified independent person and submitted with the application which indicates that subject to mitigation measures set out in the report, there will be no significant adverse impact on the integrity of European sites. The Planning Authority concurs with this assessment.

7.2.3. It is also argued that extensive ground works have been undertaken on the site and the site assessor has found that the proposed wastewater treatment system is suitable to treat effluent from the site in accordance with the EPA Code of Practice.

## **8.0 Planning Policy Context**

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

8.1.1. In planning for the development of the countryside, the NPF acknowledges that there is a need to differentiate between demand for housing in areas under urban influence and elsewhere, as per the following objective:

8.1.2. **National Objective 19:** Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

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

- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

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

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

## 8.3. Donegal County Development Plan 2018-2024

### 8.3.1. Rural Housing

The application site is located within a Structurally Weak Rural Area. The objectives and policies which apply to the development of a rural dwelling in such areas are identified below.

### 8.3.2. Rural Housing Objectives

**RH-O-1:** To distribute the projected need for housing units in the rural area in line with the Core Strategy.

**RH-O-2:** To support a balanced approach to rural areas to retain vibrancy and ensure the sustainability of established rural communities while having proper regard to environmental considerations

**RH-O-3:** To ensure that new residential development in rural areas provides for genuine rural need.

**RH-O-5:** To promote rural housing that is located, designed and constructed in a manner that is sustainable and does not detract from the character or quality of the receiving landscape having particular regard to the Landscape Classifications illustrated on Map 7.1.1 and contained within Chapter 7 of this Plan.

### 8.3.3. Rural Housing Policies

**RH-P-1:** The following requirements apply to all proposals for rural housing:

- (1) Proposals shall be subject to the application of Best Practice in relation to the siting, location and design of rural housing as set out in Appendix 4 and shall comply with Policy RH-P-2;
- (2) Proposals shall be sited and designed in a manner that enables the development to assimilate into the receiving landscape and that is sensitive to the integrity and character of rural areas. Proposals shall also be located so as not to adversely impact on Natura 2000 sites or other designated habitats of conservation importance, prospects or views, including views covered by Policy NH-P-17;
- (3) Any proposed dwelling, either by itself or cumulatively with other existing and/or approved development, shall not negatively impact on protected areas defined by the north western International River Basin District Plan;
- (4) Site access/egress shall be configured in a manner that does not constitute a hazard to road users or significantly scar the landscape, and shall have regard to Policy T-P15;
- (5) Any proposal which does not connect to a public sewer or drain shall provide for the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health and accords with Environmental Protection Agency codes of practice;
- (6) Proposals shall be subject to the flood risk management policies of the Plan;
- (7) In the event of a grant of permission the Council will attach an occupancy condition which may require the completion of a legal agreement under S. 47 of the Planning and Development Act 2000 (as amended).

**RH-P-2:** It is a policy of the Council to consider proposals for a new rural dwelling which meets a demonstrated need provided the development is of an appropriate quality design, integrates successfully into the landscape, and does not cause a

detrimental change to, or further erode the rural character of the area. In considering the acceptability of a proposal the Council will be guided by the following considerations:

- (1) A proposed dwelling shall avoid the creation or expansion of a suburban pattern of development in the rural area;
- (2) A proposed dwelling shall not create or add to ribbon development;
- (3) A proposed dwelling shall not result in a development which by its positioning, siting or location would be detrimental to the amenity of the area or of other rural dwellers or would constitute haphazard development;
- (4) A proposed dwelling will be unacceptable where it is prominent in the landscape; and shall have regard to Policy T-P-15;
- (5) A proposed new dwelling will be unacceptable where it fails to blend with the landform, existing trees or vegetation, buildings, slopes or other natural features which can help its integration. Proposals for development involving extensive or significant excavation or infilling will not normally be favourably considered nor will proposals that result in the removal of trees or wooded areas beyond that necessary to accommodate the development.

**RH-P-4 Structurally Weak Rural Areas:** It is a policy of the Council to consider proposals for new one-off housing within structurally weak rural areas from any prospective applicants with a need for a dwelling house (urban or rural generated need), provided they demonstrate that they can comply with all other relevant policies of this Plan, including RH-P-1 and RH-P-2. New holiday home development will not be permitted in these areas.

‘Building a House in Rural Donegal: A Location, Siting and Design Guide’ forms Appendix 4 of the Plan and includes technical and development management guidance for rural housing.

#### 8.4. Landscape

- 8.4.1. Map 7.1.1 of the development plan confirms that the main body of the application site is located within an Area of Moderate Scenic Amenity. The site entrance and the adjoining regional road are designated as an Area of High Scenic Amenity.

#### 8.4.2. **Natural Heritage Policies**

**NH-P-1:** It is a policy of the Council to ensure that development proposals do not damage or destroy any sites of international or national importance, designated for their wildlife/habitat significance in accordance with European and National legislation including: SACs, Special SPAs, NHAs, Ramsar Sites and Statutory Nature Reserves.

**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.

**NH-P-9:** It is the policy of the Council to manage the local landscape and natural environment, including the seascape, by ensuring any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of the area.

**NH-P-13:** It is a policy of the Council to protect, conserve and manage landscapes having regard to the nature of the proposed development and the degree to which it can be accommodated into the receiving landscape. In this regard the proposal must be considered in the context of the landscape classifications, and views and prospects contained within this Plan and as illustrated on Map 7.1.1: 'Scenic Amenity'.

#### 8.5. **EIA Screening**

- 8.5.1. Having regard to the nature and scale of the proposed development, comprising 1 no. residential dwelling, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### 8.6. **Natural Heritage Designations**

- 8.6.1. The subject site is not located within or contiguous to a Natura 2000 site. The nearest Natura 2000 sites are located approximately 100 metres to the east and are

the Lough Nillan Bog SAC (Carrickatlieve) SAC (Site Code: 000165) and the Lough Nillan Bog SPA (Site Code: 004110).

## **9.0 Planning Assessment**

I have read the entire contents of the file, visited the subject site, have had particular regard to the issues raised in the grounds of appeal and the decision of the Board under ABP306050. I consider the pertinent issues in determining the current application and appeal are as follows:

- Access Arrangements and Vision Lines
- Backland Development
- Suitability of the Site to Accommodate a Proprietary Wastewater Treatment Plant
- Appropriate Assessment Issues

Each of these issues will be dealt with in turn.

### **9.1. Access Arrangements and Vision Lines**

- 9.1.1. I note that An Bord Pleanála in refusing planning permission for the previous application for a dwelling, did so on the basis that the proposed dwelling would result in an intensification of an existing access point where the 80 kilometre an hour speed limit applies along a section of the road served by a continuous white line. The planning inspector in the previous report concluded that the traffic movements that would be generated on foot of one additional dwelling at this location would not generate any significant intensification of the development that would result in a traffic hazard. It was concluded therefore to refuse planning permission on this basis would be unreasonable. The Board however came to a different conclusion in this regard.
- 9.1.2. The appellant argues that in order to achieve requisite sightlines express permission is needed from landowners to the north of the access to keep vision lines clear and this consent will not be forthcoming from the appellant who is the owner of lands to the north. However, the applicant in response to the grounds of the appeal has indicated that such a letter was forthcoming in the case of the grant of planning

permission for the bungalow to the immediate south of the appeal site owned by the applicants' brother. According to the information contained on file, the appellant in this instance gave consent to the applicants' brother to provide clear and unobstructed sightlines at the site entrance under Reg. Ref. 16/51162. As the current application proposes to use the same access I would agree with the applicant in his response to the grounds of appeal that clear and unobstructed views at the entrance has already been assented to under the previous application and cannot be withdrawn for the purposes of the current application.

9.1.3. The applicant has also suggested that there are relevant precedent decisions where An Bord Pleanála granted access onto the R262 for a windfarm development within 2 kilometres of the subject site and this represents a relevant precedent for granting planning permission for the current application and appeal. I would not agree that a grant of planning permission for a new access onto the R262 in the wider area represents a relevant precedent to grant planning permission for a new access on the subject site. The access serving the windfarm, or indeed any other access onto the R262 relates to a separate set of circumstances relating to sightlines, changes in horizontal and vertical alignment along the roadway etc. And cannot be used as justification to grant planning permission for the access in this instance.

9.1.4. While the applicant in the response to the grounds of appeal has set forward a series of arguments which attempt to justify the proposed access arrangements, the fact of the matter remains that no material change in circumstances has occurred in terms of access arrangements that would warrant or justify a change in the Board's conclusion with regard to the access arrangements. The road alignment and sightlines remain the same as that previously refused by the Board. As there is no material change in circumstances surrounding the access arrangements, I can only conclude that there is no justification or reasoned arguments which would prompt the Board to reach a different conclusion in respect of access arrangements.

## 9.2. **Backland Development**

9.2.1. The grounds of appeal suggest that the proposed development constitutes haphazard backland development and this should form part of the Board's deliberations in adjudicating on the application and should present an additional reason for refusal on the subject site. Having visited the subject site I would concur



that the proposed development could be seen as haphazard backland development being located directly behind an existing dwelling fronting onto the roadway. I note that the Planning Inspector in the previous planning report noted that the proposed development represented inappropriate backland development which would introduce a second building line behind the appellant's single storey property and the proposal would thus compound the existing fragmented pattern of development in the area. Again however, I note that the Board set aside this particular reason for refusal in its determination of the application. I would reiterate that there has been no material change in circumstances in the current development which would lead the Board to deviate from its reasoning in respect of the previous application. On this basis I do not consider it appropriate to refuse planning permission specifically on the basis that the proposed development constitutes backland development.

### **9.3. Suitability of the Site to Accommodate a Proprietary Wastewater Treatment Plant**

- 9.3.1. The Board previously refused planning permission on the basis that it was not satisfied that the subject site was suitable to accommodate an on-site wastewater treatment system. The issue of the suitability of the subject site to accommodate an on-site wastewater treatment system was not raised in the grounds of the third-party appeal. However, it did form the basis for the Board's first reason for refusal and therefore was addressed in the applicants' response to the third-party appeal. The applicant in the response to the grounds of the third-party appeal states that prior to the decision of An Bord Pleanála, the applicant has carried out intensive land drainage programmes around and through the site as well as importing more suitable soils to the general location of the proposed percolation area to the rear of the site. On this basis, the applicants' response to the grounds of appeal contends that the site is now deemed suitable to accommodate a septic tank for primary treatment in conjunction with an adequately sized pumped chamber to evenly distribute partially treated effluent to a sand polishing filter and thereafter to two puraflo peat pods with an eventual discharge to groundwater. While it is proposed therefore to incorporate basic primary treatment through the provision of a septic tank any effluent from the proposed development will go through a series of further secondary treatment by way of a sand polishing filter and a fibrous peat medium prior to discharge. The proposed proprietary wastewater treatment arrangements

may attenuate any effluent from the septic tank in question. However, I would still have a number of concerns in respect of the inherent suitability of the site to accommodate a proprietary wastewater treatment system.

9.3.2. As already stated in my site description, notwithstanding the purported improvements undertaken to create a more efficient drainage system, the site was still very wet underfoot and the presence of rushes are still ubiquitous throughout the site. Furthermore, it is not evident that the importation of soil has significantly improved the percolation characteristics of the site in order to adequately accommodate a proprietary wastewater treatment system. I would refer the Board to the two characterisation forms submitted under ABP306050 and the current application before the Board. The Board should note that notwithstanding the purported improvements which have taken place on site subsequent to the previous decision, the water table level on site has actually increased rising from 1.7 metres below ground level to 1.45 metres below ground level in the most recent site assessment submitted.

9.3.3. Furthermore, according to the information contained on file, the trial hole which was excavated in mid-August 2020 coincides with a period of the year (end of summer) when groundwater levels are normally at their lowest level in the ground. Whereas the site assessment undertaken for the previous application under ABP306050 was carried out in April, 2018, a period of the year when groundwater levels are likely to be higher than the end of summer. The purported works undertaken therefore, particularly the drainage works, do not appear to have lowered the water table on the site. In fact, the opposite appears to be the case. Furthermore, while the applicant may have imported more suitable soil in terms of percolation characteristics, this soil, it is assumed will be placed under the area of the sand polishing filter or the area where effluent is to be discharged subsequent to be treated in the puraflo modules. This has not in my view adequately addressed the inherent percolation and drainage problems associated with the site as a whole. The previous site assessment undertaken indicates that there was no significant drop in the water levels in the test holes which suggest that the subject site is not suitable for a conventional septic tank or percolation area. The soil and subsoil characteristics underlying the area of imported soil have not changed as a result of the works undertaken. It is likely therefore that any hydraulic loading from the percolation area after percolating

through the imported soil will hit the same impermeable barrier associated with the inherent poor percolation characteristics associated with the site as a whole. There is no guarantee therefore that effluent treated in the proprietary wastewater treatment system will adequately percolate down to groundwater. In fact, it is more likely that any treated wastewater discharged into the percolation area will meet the more impermeable layer of subsoil inherent on the site and as such the imported soil underlying the polishing filter/percolation area will back up and eventually become waterlogged.

- 9.3.4. Therefore, notwithstanding the proposed improvements carried out on site it is my considered opinion that the Board cannot be satisfied that the proprietary wastewater treatment system to be constructed on site will not be prejudicial to public health. On the basis of the above therefore, I consider that the Board's original conclusions that the site is unsuitable to accommodate a proprietary wastewater treatment system and the basis that the effluent from the development cannot be satisfactorily treated and disposed of on site is a sound conclusion.

#### 9.4. **Appropriate Assessment Issues**

- 9.4.1. The planning application was accompanied by a Natura Impact Statement. A Natura Impact Statement identifies that the application site is hydrologically connected to both the Lough Nillan Bog SAC and the Lough Nillan Bog SPA. The Natura Impact Statement identifies several potential effects which could occur during the construction works and during the operational phase of the development which could lead to deterioration of water quality through direct pollution events/accidental spillage or by indirect diffuse pollution from the wastewater treatment system. The potential threats could include the release of suspended solids, run-off, oils and other solvents during the construction.
- 9.4.2. The qualifying interests associated with the Lough Nillan Bog (Carrickatlieve) SAC include the following:
- *Oligotrophic waters containing very few minerals of sandy plains.*
  - *Blanket bogs.*
- 9.4.3. The qualifying interests associated with the Lough Nillan Bog SPA (Site Code: 004110) include the following bird species:

- *Merlin*
- *Golden Plover*
- *Greenland White Fronted Goose*
- *Dunlin*

9.4.4. Any substance release into the natural environment either during the construction or operational phase could adversely impact on the qualifying interests associated with the SAC. Oligotrophic waters such as Tamur Lough which is located less than a kilometre to the south of the subject site, and is downgradient from the subject site could be at risk from nutrient releases from a less than adequate functioning of the proprietary wastewater treatment system, particularly in respect of phosphates nitrates, the later of which is a highly mobile ion which can lead to the enrichment and eutrophication of lakes. The increased levels of drainage in and around the subject site could provide very efficient conduits for any contaminant or nutrient release.

9.4.5. The appropriate assessment undertaken identifies that it is critical that the quality of the discharge water from the drainage system of the development remains of good standard in order to prevent any risk of pollution events.

9.4.6. I have argued above that the subject site incorporates percolation characteristics which are generally unsuitable to accommodate a well-functioning proprietary wastewater treatment system. While the applicant has endeavoured to improve the inherent percolation and permeability characteristics of the soil by incorporating drainage channels and importing subsoil; concerns nevertheless remain that the proposed development poses a risk to water pollution and as such has the potential to impact on Natura 2000 sites by way of hydrological connections which exist between the subject site and the Lough Nillan Bog SAC. Notwithstanding the proposed improvements on site, it is my considered opinion that the subject site could potentially give rise to pollution.

9.4.7. If the Board agree with the general conclusion that effluent from the development cannot be satisfactorily treated and disposed of off site, it in my view follows that the proposed development potentially poses a threat to the nearby Lough Nillan SPA and in particular oligotrophic waters which are located downstream of the site within

the SAC. Based on this reasoning the Board in my view cannot be satisfied that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the Lough Nillan Bog (Carrickatlieve) SAC. I do not consider that the proposed development has the potential to impact on any of the species of conservation interest associated with the SPA. However, I do acknowledge that the Board came to the conclusion that the proposal could impact on the integrity of the SPA in its previous determination of the applicant and appeal.

## **10.0 Conclusions and Recommendation**

Arising from my assessment above I consider that there has been no material change in circumstances which would warrant or justify the Board to come to the conclusion that the issues of concern in respect of the previous application have been overcome or addressed in the current application. And on this basis, I recommend that the Board refuse planning permission for the proposed development for the same reasons set out under ABP306050.

## **11.0 Decision**

Refuse planning permission for the proposed development based on the reasons and considerations set out below.

## **12.0 Reasons and Considerations**

1. Having regard to the soil conditions on site, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system and the incorporation of site improvement works on the subject site which seek to improve the overall percolation characteristics of the site. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

2. On the basis of the information provided with the application and appeal, including the Natura Impact Statement and in light of the assessment carried out, the Board is not satisfied that the proposed development individually, or in combination with other plans or projects, would not adversely affect the integrity of the Lough Nillan Bog (Carrickatlieve) SAC – Site Code: 000165 in view of the site's conservation objectives. In such circumstances the Board is precluded from granting planning permission.
3. Having regard to the location of the access/egress point onto a regional road served by a continuous white line and where the speed limit of 80 km/hour applies, it is considered that the introduction of an additional dwelling would result in a material intensification of traffic movements at this access/egress point onto the public road network, which would endanger public safety by reason of a traffic hazard. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Paul Caprani,  
Senior Planning Inspector.

17th January, 2022.