



An
Bord
Pleanála

Inspector's Report ABP-311336-21

Development

Retention of walls along roadway and amendments to roadway level and structure. Construction of house with septic tank, percolation area and associated site works.

Location

Craigadarton, Rathmullan & Ballyboe,
Rathmullan, Co. Donegal

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

2150075

Applicant(s)

Kate Carton.

Type of Application

Permission.

Planning Authority Decision

Grant permission.

Type of Appeal

Third Party.

Appellant(s)

Bernadette O'Donnell,
Bernadette McDaid.

Observer(s)

None.

Date of Site Inspection

10th March 2022.

Inspector

Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 1.42ha and is located in the village of Rathmullan, in north County Donegal. The site is located toward the north end of the village and consists of a large, triangular plot that is adjacent to holiday home development at Clearwaters, Kinnegar Cove and Rathmullan Cottages.
- 1.2. The site is set on undulating ground that rises to a ridge in the centre and which falls away to the east and west. The remains of a demolished mobile home lie in the centre of the site and there is also a tall stone post in this area. The site primarily contains improved grassland and it is enclosed along all boundaries by post and wire fencing
- 1.3. The site is accessed from the L5442, via an undulating stone track that also provides access to a mobile adjacent to the site access. The stone track has been the subject of recent development, intended to improve access, and which has involved the provision of retaining walls on both sides and regrading of the route.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises (1) retention of concrete walls alongside roadway, (2) retention of amendments to roadway structure and road level and (3) proposed construction of a house, septic tank and percolation area and all associated siteworks.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 12th August 2021, subject to 14 No. planning conditions.

Condition 2 requires that the house shall be used as a holiday home and not as a permanent home.

Condition 3 requires visibility splays of 2.4m x 70m to be provided in both directions from the site access to the nearside road edge.

Condition 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 public road.

Condition 9(b) requires the roof to be blue/black and external walls to be white, unless otherwise agreed.

Condition 11 requires site boundaries to be planted with hedgerow semi-mature native species and that at least 36 semi-mature broadleaf trees should be planted in the first planting season.

Condition 13 provides specifications for the wastewater treatment system to be installed on the site.

Condition 14 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 8th March 2021, 8th June 2021 and 3rd August 2021 have been provided. The first report states that the subject site is located within the settlement boundary for Rathmullan and that the proposed development is acceptable in principle. The proposed scale, design and siting are proposed to be acceptable. Regarding the walls that require retention and proposed works to the access road, they are stated to be minor and are also acceptable. Regarding access, proposed vision lines are stated to be acceptable, whilst specific requirements in respect of the gradient of the access are stated to not apply, given its established nature. Additional information is requested in respect of the proposed finish level, material and surface water drainage at the site access. Foul drainage proposals are stated to be acceptable. In respect of appropriate assessment screening, the report requests a revised ecological opinion, which discusses the full extent of the proposal. The report recommends that the following additional information be sought: -

- Applicant to submit revised layout indicate finish level of access road, surface water drainage proposals and the extent of the existing slab.
- Applicant to submit a revised section drawing indicating the extent of fill to be removed, fill proposals, proposed for the connecting slab and the provision of a drainage channel at the point of access onto the public road.

- Applicant to submit a revised method statement for the connecting slab.
- Applicant to submit a revised ecological opinion that refers to excavations and provision of a slab linking the retaining walls and the potential for these works to impact negatively on Lough Swilly SAC and SPA.

3.2.2. The second report followed receipt of the additional information response. It summarises and responds to the individual AI responses and recommends that clarification of additional information be sought, as follows: -

- Applicant to submit exact details of extent of existing and proposed slab connections.
- Applicant to submit revised site layout plan identifying the extent of lands required to complete proposed road works.
- Applicant to submit revised site layout plan identifying the extent of an existing stream
- Applicant to submit a revised addendum to the ecological opinion that confirms that the extent of proposed works and relationship of same to the existing stream have been considered by the assessment.

3.2.3. The third report followed receipt of the clarification of additional information response. It summarises and responds to the individual AI responses and recommends that permission be granted, subject to 14 No. conditions which are consistent with the Planning Authority's decision.

3.2.4. Other Technical Reports

Handwritten comments from the **Area Roads Engineer** office dated 8th April 2021 and 29th June 2021 have been provided. The initial comments request additional information in relation to proposed sightlines at the junction of the private and county roads. The second submission did not provide any further commentary on the development.

3.3. Prescribed Bodies

3.3.1. Irish Water made a submission dated 14th April 2021, advising that it had no objection subject to conditions.

- 3.3.2. The Planning Reports indicate that the HSE Environmental Health Office, An Taisce and the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DAU) were consulted on the application but did not make a responding submission.

3.4. **Third Party Observations**

- 3.4.1. A number of third-party letters of objection were received, the issues raised within which can be summarised as follows: -
- Development may be commercial in nature;
 - Road safety;
 - Public safety and residential amenity;
 - Land ownership.

4.0 **Planning History**

20/50999 – An application was submitted on 24th July 2020 for a proposed single storey house, septic tank and percolation area and including associated site works but the application was subsequently withdrawn on 17th September 2020.

Enforcement history

UD20106 – Complaint regarding unauthorised construction at the subject site. Correspondence provided as part of the appeal, from the Planning Authority dated 14th October 2020, states that an enforcement notice was issued.

5.0 **Policy Context**

5.1. **Donegal County Development Plan 2018-2024**

- 5.1.1. Chapter 2A of the Donegal County Development Plan 2018-2024 contains the Core Strategy and Table 2A.3 ‘Settlement Structure’ identifies Rathmullan 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 Rathmullan. 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.

UB-P-24: It is a policy of the Council that Multiple and single holiday home units will be considered within settlement framework areas provided that the proposed development would not result in the total number of existing and permitted holiday homes within the settlement framework area exceeding 20% of the total existing and permitted housing stock. Any application will also be assessed in the light of all relevant material planning considerations including land-use zonings, the availability of infrastructure, relevant policies of the County Development Plan and other regional and national guidance/policies and relevant environmental designations. Such developments must have regard to the scale and form of the settlement.

UB-P-29: It is a policy of the Council that holiday home development will be considered within the settlement framework areas without the application of a restriction in terms of the balance between holiday homes and permanent homes (policy UB-P-24), subject to environmental and heritage designations and amenity considerations and where the applicant can demonstrate that the site is a brownfield site within the urban fabric of a settlement framework and its development for holiday home purposes is of a size and scale that would not be detrimental to the character of the settlement. A brownfield site is one that has been previously built upon. It excludes parks, recreation grounds, private or public open space, allotments, forestry lands/buildings agricultural lands and lands where the remains of the previous use have blended into the landscape, or have been superseded by landuse zonings or lands of conservation value or amenity use.

- 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 Lough Swilly SAC (Site Code 002287) which lies c. 300m to the east. Lough Swilly SPA (Site Code 004075) lies slightly further off the coast, c. 400m to the 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 proposed construction of a house, septic tank and percolation area and retention of concrete walls alongside the public road and amendments to the roadway structure and road level, together with associated site works on a site of 1.42ha. 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. Separate third-party appeals have been received from Bernadette O'Donnell and Bernadette McDaid, both of whom provided their home address as 1 Woodbrook, Rathmullan, Co. Donegal. The grounds of appeal are summarised separately below.

Appeal by Bernadette O'Donnell

- Permission for the reinforced concrete walls on either side of the proposed access was not sought in compliance with normal regulations.
- The wall constructed on the north side of the access is on land owned by the appellant. It has cut off the appellant's access to the lane, affects usage of the appellant's garden and has caused flooding on their land.
- The raised access lane is also not entirely within the applicant's ownership.
- Permission should not have been granted to the applicant as the development incorporates land outside the applicant's ownership.
- The Board is requested to refuse permission.

Appeal by Bernadette McDaid

- Following construction work to the lane access, surface water flows directly into the appellant's garden and garage.
- Electrical works undertaken protrude into and require access from the appellant's garden.
- The provision of a concrete retaining wall blocks the appellant's access to the laneway from their garden
- Reference is made to correspondence with the Planning Authority in respect of unauthorised development procedures. It is questioned why the applicant has applied for permission having been served an Enforcement Notice.
- Reference is made to the ecological report provided as part of the application, which states that access to the site is from the local secondary road L-5442-1. It is questioned who is responsible in the event of a serious incident.

6.2. Applicant Response

6.2.1. A first party response to the appeal was received on behalf of applicant, prepared by Cunnane Stratton Reynolds, on 7th October 2021: -

- Conditions attached to its decision by the Planning Authority address potential concerns regarding the development. Remaining grounds of appeal fall outside of the consideration of the planning merits of the case.
- It is noted that condition 2 was attached in error. The site is located within the settlement boundary for Rathmullan, where no restrictive planning condition is required.
- Reference is made to aspects of the Planning Authority's assessment of the application, which is considered to be thorough and balanced.
- The appellants' claims are not planning-related and there is a complete absence of any planning-based objection. The Board will be aware of its responsibility to determine the planning merits of this appeal.
- Reference is made to Section 37O(6) of the Planning and Development Act, 2000, as amended and the Development Management Guidelines in respect of dealing with matters that are controlled by other codes
- Appeal by Bernadette O'Donnell
 - The applicant's title holding was presented to the Planning Authority and references to walls being constructed on the appellant's lands are incorrect. The Board is asked to consider Section 37O(6) of the Act.
 - The appellant's property is accessed from the public road and there is no legal right of access from the applicant's laneway.
 - The applicant consulted with the appellant prior to constructing the wall and received consent to do so. Following withdrawal of a previous application further consultation took place and the applicant made a number of offers to the appellant, without success.
 - It appears the appellant is occupying their house permanently, in contravention of its planning permission.

- If works are carried out in breach of planning, the Planning Authority will take appropriate action. No such action has been taken.
- No flooding has been caused to the appellant's property and no additional surface water has been created by works carried out to date. If anything, the walls will improve the drainage situation by preventing water from running into the appellant's garden.
- References to impacts on the appellant's enjoyment of their garden are unsubstantiated. The images provided with the appeal show that the wall is not visible when the appellant's gate is closed.
- Appeal by Bernadette McDaid
 - It is acknowledged that unauthorised development took place and these are included in the retention elements of the proposal.
 - No element of the proposal could be considered dangerous.
 - Flooding concerns have been addressed.
 - References to electrical works and dangers are outside of planning.
 - Damp conditions within the appellant's garage are not attributable to the applicant's development. Reference is made to observations of the condition of the garage and site conditions, which contribute to its current condition.

6.3. Planning Authority Response

6.3.1. The Planning Authority made a submission on 6th October 2021, the contents of which can be summarised as follows: -

- Regarding the unauthorised reinforced concrete walls, permission for these walls forms part of the application.
- The appellant's claim that a wall has been constructed on their land is a civil matter between the parties. The applicant provided details of sufficient interest in the land to warrant a valid application.
- No evidence of flooding has been provided and available records do not identify flood risk on the site.

- Consideration has been given to impacts on third party lands and drainage proposals, including clarification through additional information requests.
- The Board is requested to be mindful of condition No. 2 of its decision, which was attached in error. The condition should have required the house to be occupied as a permanent house and should not be used as a holiday home. The Board is requested to amend this condition, should permission be granted.
- The Board is requested to uphold the decision to grant permission.

6.4. **Observations**

6.4.1. None received.

6.5. **Further Responses**

6.5.1. None received.

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:

- Site ownership;
- Principle of development;
- Residential amenity;
- Access
- Drainage;
- Other Issues;
- Appropriate Assessment.

7.2. **Site Ownership**

7.2.1. As I have stated, whilst there are two separate third-party appeals, both appellants have provided an identical home address; 1 Woodbrook, Rathmullan, Co. Donegal.

Both of the appeals dispute ownership of the access lane, where the retention works are located.

- 7.2.2. In responding to the appeals, the applicant states that their title holding was presented to the Planning Authority and also states that the appellants have no legal right of access off the applicant's laneway.
- 7.2.3. I have reviewed the application and appeal documentation and did not encounter any title documents relating to the land. The Planning Authority's report dated 8th March 2021 contains a screengrab from www.landdirect.ie, which identifies the landholding that includes the access lane and the main part of the site and the report states that this landholding is in the ownership of the applicant.
- 7.2.4. Section 5.13 of the *Development Management Guidelines* (DOEHLG, 2007) provides detailed guidance on the issue of land ownership disputes within planning applications, outlining that the planning system is not appropriate for resolving land disputes and that these are ultimately matters for the Courts. Further, it is advised that permission should only be refused on the basis of land ownership, where it is clear that the applicant does not have sufficient legal title.
- 7.2.5. From the information available to me, the applicant has asserted control of the lands and the appellants have not provided any evidence which would undermine this position. I am therefore satisfied that there is a reasonable prospect that the development can proceed if granted and, in view the advice of the *Development Management Guidelines*, I consider it would be unjustified to refuse permission on this basis.

7.3. Principle of Development

- 7.3.1. The subject site is located within the settlement boundary of Rathmullan 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.
- 7.3.2. 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.'

- 7.3.3. I am satisfied that the proposed development is consistent with the development plan's strategy for the development of Rathmullan, including policy TV-P-2, and is thus acceptable, subject to consideration of other issues as discussed below.

7.4. Residential Amenity

Proposed House

- 7.4.1. The proposed house has a simple, single storey form and incorporates a contemporary monopitch roof. The internal layout provides for 2 No. bedrooms, utility, bathroom and an open living/dining/kitchen area. The stated gross floor area is 101sqm.
- 7.4.2. In my opinion the proposed house displays the characteristics of a holiday home rather than a permanent home. However, I note that the supporting statement submitted with the application states that the applicant is originally from Rathmullan and intends to use the proposed house as a permanent home.
- 7.4.3. In its submission on the appeals, the Planning Authority advised that condition No. 2 of its decision had been attached in error and requested that a revised condition should be attached, in the event the Board decide to grant permission, requiring that the house should be occupied as a permanent home and not as a holiday home. From my review of planning records in the area I note that such conditions are commonplace and in accordance with development plan policy UB-P-24, which limits the extent of holiday homes within any settlement. Should the Board decide to grant permission, I recommend a condition be attached to this effect.
- 7.4.4. 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.

Adjacent Housing

- 7.4.5. The proposed house will not overlook or overshadow neighbouring properties, in view of its central location within the site and the level of separation from adjacent property.

- 7.4.6. The appellants state that the retaining walls proposed for retention negatively impacts on their enjoyment of the north-adjointing garden. The walls run along either side of the access, framing the boundary and access to the south-adjointing property, and running parallel to the boundary with the appellants' property.
- 7.4.7. I noted on my site visit that there is a timber fence on the appellants' side of the boundary, which runs parallel to the wall for its entire length and is taller than it. The fence effectively screens the wall from view from the garden, except when a gated opening in the fence is opened. In my view there is limited visibility of the wall from the adjoining garden and it has a very limited impact on the appellants' residential amenity.
- 7.4.8. The retaining wall on the south side of the access is visible and prominent from the south-adjointing property, which contains a mobile home. I note that a letter of support for the development was provided by the owner of this property, as part of the additional information response.

7.5. Access

- 7.5.1. Access to the site is taken from the L5442, via a graded lane access that is stated to have been regraded/alterd by the applicant in late 2020. As been stated previously, there are retaining walls on both the south and north sides of the access lane. The part of the site where the proposed house is located is c.150m from the public road and is shown on the site layout drawing as being accessed via a washed gravel driveway.
- 7.5.2. As part of the development retention is sought for the regrading works to the lane and the retaining walls and it is also proposed to undertake further remedial works to the lane, to provide for a lower level and to provide a reinforced structural slab in the area closest to the junction with the L5442. Visibility splays along the L5442 are outlined on the site layout drawing as being 2.4m x 70m in both directions.
- 7.5.3. The access lane is now elevated above adjoining lands and the applicant states that the regrading works were undertaken in order to improve access to the site and to provide required sightlines. As I have stated previously, the retaining walls do not have a significant or unacceptable impact on the amenity of adjacent residential occupiers and, in this context, I do not object to the regrading work that has been

undertaken and the further work that is proposed, which will have the effect of lowering the level of the access.

- 7.5.4. The appellants express concerns in relation to safety potential safety risks to garden users. Whilst the access is elevated above the appellants' garden, it provides a roughly even surface and as I have stated previously, it is contained on both sides by retaining walls. I am satisfied that it provides a safe means of access to the site and I note that the Planning Authority did not object to this aspect of the development. The appellants have not provided any evidence in support of their argument that there is a safety risk arising from the access arrangement and in these circumstances, I consider it would be unjustified to refuse permission on this basis.
- 7.5.5. Proposed visibility splays exceed the minimum required for a 50km/h speed zone and are acceptable.

7.6. Drainage

Foul Drainage

- 7.6.1. The development includes the provision of a septic tank and percolation area. A Site Suitability Assessment Report was submitted with the application but this report has not been provided to date, as part of the appeal documents. Notwithstanding the absence of this report, I note that the Planning Authority's planning report dated 8th March 2021 identifies that a T-test value of 35.75 min/25mm was returned.
- 7.6.2. Available GSI mapping identifies the category of aquifer as 'poor', with a vulnerability classification of 'extreme'. Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice Domestic Wastewater Treatment Systems identifies an 'R2¹' response category i.e., acceptable subject to normal good practice.
- 7.6.3. From the information available to me, I am satisfied that the site can accommodate a wastewater treatment system and I note that the results of the T-test, as outlined above. The Planning Authority did not express any concerns regarding foul drainage proposals and I note that the appellants have not raised any concerns in this regard, as part of the appeal.
- 7.6.4. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the detailed specification of the on-site wastewater treatment system with the Planning Authority.

Surface Water Drainage

- 7.6.5. Surface water for the main part of the site is identified on the site layout drawing as draining to an existing drain that runs parallel to the east site boundary. The drain is not identified on available EPA mapping but the Ecological report submitted with the application states that it drains to the Aghavannan stream, to the north of the site, and subsequently flows into Lough Swilly, approx. 1km north of the site.
- 7.6.6. The appellants state that the revised access arrangement has given rise to flooding issues at the adjoining property.
- 7.6.7. Surface water at the front of the site, in the area of the junction with the L5442 is shown on the site layout drawing as draining via a drainage channel to the unnamed stream. Further details of the proposed drainage channel have not been provided but I am satisfied that subject to locating the channel at a low point on the access, this approach will adequately cater for surface water in the area and will ensure that run-off does not drain onto third party lands.
- 7.6.8. I noted on my site visit that the retaining wall adjacent to the north site boundary does not extend to the junction with the L5442, with the result that there is a section of c.10m of the access that is open and which may allow for run-off onto the neighbouring site.
- 7.6.9. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the detailed layout of the surface water drainage system on the site and that the agreed system should ensure no run-off drains onto third party lands.

7.7. Other Issues

- 7.7.1. The appellant Bernadette McDaid raises concerns regarding enforcement proceedings and the impact of the proposed development on same. Whilst I note the concerns, enforcement is a matter for the Planning Authority, as the competent authority for planning enforcement, and is not a matter which can be taken into consideration by the Board.
- 7.7.2. The appellant also states that electrical works undertaken protrude into and require access from the appellant's garden. The site layout drawing does not identify any proposed electrical works in the vicinity of the appellant's garden and having considered the information provided as part of the appeal it appears to me that this

concern relates to works undertaken by the ESB. This is not a matter forming part of the proposed development and as such, is not a matter for consideration by the Board.

- 7.7.3. As I have stated previously, there is a tall stone post in the centre of the site. It is not subject to any recorded monument listing and it is not identified on any available historic mapping pertaining to the area. The proposed development does not affect its status on the site and it is shown as being retained in-situ. I note that the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media was consulted on the application, but did not make any submission on it.

7.8. Appropriate Assessment

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 7.8.1. 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

- 7.8.2. The applicant submitted an Ecological report with the application, prepared by Greentrack Environmental Consultants. It provides a description of the proposed development, identifies European sites within a possible zone of influence and identifies potential impacts.
- 7.8.3. Addendums to the Report was provided at the additional information and clarification of additional information stages.

Screening for Appropriate Assessment- Test of likely significant effects

- 7.8.4. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.8.5. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

- 7.8.6. The development is described at Section 2 of this Report. In summary, permission is sought for retention of concrete walls alongside the site access roadway, retention of amendments to the roadway structure and road level and proposed construction of a house, septic tank and percolation area and all associated siteworks. The site has a stated area of 1.42ha and it consists of a roughly triangular shaped plot to the rear of housing at Kinnegar Cove, Woodgrove and Rathmullan Cottages. It is accessed from the L5442. Foul drainage is proposed to drain to a septic tank and percolation area to the north of the house and surface water is proposed to drain to an existing open drain that runs parallel to the east site boundary.
- 7.8.7. 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.

Submissions and Observations

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

European Sites

- 7.8.9. The site is not located within a European site. The closest such site is Lough Swilly SAC (Site Code 002287) which lies c.300m to the east. Lough Swilly SPA (Site Code 004075) lies slightly further off the coast, c.400m to the east.
- 7.8.10. The Ecological Report submitted with the application identifies a number of additional European sites within a 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: -
- Ballyhoorisky Point to Fanad Head SAC (Site Code 001975) 12.6km north,
 - North Inishowen Coast SAC (Site Code 002012) 10.3km north,
 - Mulroy Bay SAC (Site Code 002159) 9.66km west,
 - Lough Fern SAC (Site Code 004060) 11.7km south-west,

- Leannan River SAC (Site Code 002176) 11.9km south-west,
- Ballyarr Wood SAC (Site Code 0116) 14km south-west,
- Horn Head to Fanad Head SPA (Site Code 004194) 8.5km north-west

7.8.11. 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 Lough Swilly SAC (Site Code 002287) and Lough Swilly SPA (Site Code 004075).

7.8.12. Summaries of Lough Swilly SAC and Lough Swilly SPA are presented in the following table.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor)
<u>SAC</u>			
Lough Swilly SAC (Site Code 002287)	Estuaries, Coastal lagoons, Atlantic salt meadows, Molinia meadows on calcareous, peaty or clayey-silt-laden soils, Old sessile oak woods with Ilex and Blechnum in the British Isles, Otter	c.0.3km east	Connection via surface water
<u>SPA</u>			
Lough Swilly SPA (Site Code 004075)	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, Greenland White-fronted	c.0.4km east	Connection via surface water

	Goose, Wetland and Waterbirds		
--	-------------------------------	--	--

7.8.13. In respect of Screening, the Ecological Report concludes as follows: -

‘Having established the assessment criteria, the impacts associated with the proposed development and associated works on this Natura 2000 site, the proposed development has been assessed against all the qualifying interests. This screening matrix has established that the proposed project will not have, or had had any significant negative effect on the qualifying interests of the Lough Swilly SAC Site Code 002287 and the Lough Swilly SPA Site Code 004075.’

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

7.8.14. The site lies to the west of an unnamed stream that discharges to the Aghavannan stream. The Aghavannan stream flows into Lough Swilly SAC and SPA, c.1km north of the site.

7.8.15. Regarding Lough Swilly SAC, the Ecological report identifies that the extent of the qualifying interests within the SAC are located at varying distances from the site of between c.1.5km-3.8km and states that, in view of the distance from the site and the presence of landforms in the intervening area that act as natural sediment filtration systems, the proposed development will not pose any significant threat to the qualifying interests.

7.8.16. The proposed house is located c.45m from the unnamed stream and the intervening area contains a primarily grass ground-covering. During construction there is potential for surface waters containing suspended solids to arise on the site, but in view of the distance to the stream and the presence of a vegetated surface in the intervening space that will act as a buffer, the likelihood of suspended solids being discharged to the stream is low. For the operational phase surface water is proposed to discharge to this drain, via piped connection. Details of the make-up of the drainage system have not been provided and there is the potential for transfer of suspended solids or pollutants to the stream, in view of this connection. But, in saying this, the point of entry to the stream is over 1km from Lough Swilly and it is very unlikely that any pollutants would be transferred to the European sites. Indeed,

in the unlikely event of discharge to the European site, the amount of suspended solid or pollutant material is very unlikely of such a quantity that significant effects would arise.

- 7.8.17. The retention elements and proposed remedial works to the roadway structure and roadway level are in the area of the unnamed stream and include retention of retaining walls and proposed excavation work as part of the installation of the structural slab over the culverted section of the stream. Site layout drawing No. 1916FI 03 contains a section drawing of this area of the proposed development and it shows that the base of the excavated trench in the area is approx. 500mm above the level of the stream.
- 7.8.18. The addendum to the Ecological report states that potential run-off from the excavation works will not be an issue as the retaining walls and excavated trench on the roadway will provide a physical barrier between the works and the stream.
- 7.8.19. I agree with the addendum report, that the retaining walls and narrow trench excavation will provide a natural attenuation feature for any surface water arising during construction and that there is a low likelihood of suspended solids being discharged to the stream. In the event that material is discharged to the stream, it is approx. 1.2km from the point of entry to Lough Swilly and it is very unlikely that it would be transferred to the European sites.
- 7.8.20. In addition to the above, whilst I note from the Natura 2000 form that the SAC is at high risk from surface water pollution, this relates to the 'coastal lagoons' area and it is over 7.5km from the point of entry to Lough Swilly from the Aghavannan stream. I am satisfied that, in this context and given the smallscale nature of the development, significant effects on water quality in this part of the SAC will not arise.
- 7.8.21. Regarding other qualifying habitats within the SAC, the NPWS Conservation Objectives document provides maps of the locations of these interests and the closest such interest to the site is c.4.75km east (measured following the route of the watercourse), on the opposite side of the Lough, and the other remaining interests are located further south, a minimum of c.10km from the site. I am satisfied that in view of the smallscale nature of the development and the level of separation from these areas of the SAC, significant effects on the SAC are also unlikely to arise.

- 7.8.22. Otter using the unnamed stream for foraging or commuting may be disturbed during the construction phase, due to noise and activity. Whilst this may lead to some short-term disturbance, I consider this is unlikely to be a significant effect for the SCI, given the stream is remote from the SAC. Movements within the stream are likely to be incidental and any disturbance is unlikely to have a significant effect on the population.
- 7.8.23. On the basis of the above, I am satisfied that the potential for significant effects on qualifying interests within the SAC is low and can be excluded at this stage.
- 7.8.24. Regarding Lough Swilly SPA, the Ecological report identifies that it is primarily designated for a variety of water and wetland birds and states that the subject site does not contain suitable foraging, breeding or nesting habitat for these Species of Conservation Interest (SCI). For the SCI for which terrestrial habitat is suitable, the Ecological report similarly states that the site does not provide suitable habitat.
- 7.8.25. I concur with the Ecological report's conclusions regarding the unsuitability of the site for the majority of the water and wetland birds that the SPA is designated for. The site does not contain any wetland habitat, so the development will not result in the loss of suitable ex-situ habitat for these SCI.
- 7.8.26. For the SCI for which improved grassland habitat may be suitable, I note that the Ecological report states that no signs of the presence of these SCI was detected on the walkover survey of the site and I would also note that it is located in an urban context where there is human activity and disturbance and I consider it is unlikely to be suitable for foraging use. I would also note there is a substantial amount of improved grassland habitat in the wider area that would be similarly suitable for these SCI. In this context, I do not consider the development of this site would result in the loss of suitable ex-situ habitat for these SCI.

Screening Determination

- 7.8.27. 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 Nos. 002287 or 004075, or any

other European site, in view of the sites' Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

7.8.28. This determination is based on the following:

- The smallscale nature of the development, which does not require specialist construction methods,
- The separation distance between the subject site and the European sites, and
- The absence of suitable wetland or terrestrial habitat on the site, which may provide suitable ex-situ habitat for Species of Conservation Interest within the Special Protection Area site.

8.0 Recommendation

8.1. I recommend that permission for the proposed development be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

Having regard to the location of the site within the settlement boundary of Rathmullan, the provisions of the Donegal County Development Plan, in particular policy TV-P-2 and the provisions of National Policy Objective 19 of the National Planning Framework, together with the nature and scale of the proposed development and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions below, the proposed development would be in keeping with the character of the area, would not seriously injure the amenities residential property of the area and would not result in the creation of a road safety hazard and would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by additional information submitted on 19 th May 2021 and 21 st July 2021, except as may
----	---

	<p>otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed house shall be used as a permanent home only and shall not be used as a holiday home unless authorised by a separate grant of permission.</p> <p>Reason: In the interests of clarity and in accordance with policy UB-P-24 of the Donegal County Development Plan 2018-2024.</p>
3.	<p>The construction of the development shall be managed in accordance with a Construction and Demolition Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall include details of intended construction practice, noise management measures, parking proposals for construction workers on the site and storage of materials and waste within the site.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
4.	<p>Water supply and drainage arrangements shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p>Reason: In the interest of public health.</p>
5.	<p>The design and layout of the access to the site from the L5442, including visibility splays, shall comply with the requirements of the planning authority, details of which shall be agreed in writing prior to the commencement of development.</p> <p>Reason: In the interest of road safety.</p>

6.	<p>All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.</p> <p>Reason: In the interests of orderly development and the visual amenities of the area.</p>
7.	<p>Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.</p> <p>Reason: In the interest of public health.</p>
8.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
9.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
--	--

Barry O'Donnell
Planning Inspector

22nd April 2022.