



An
Bord
Pleanála

Inspector's Report

ABP-311518-21

Development	Construction of 35 residential units.
Location	BLUESTACK DRIVE, DRUMROOSKE WEST, DONEGAL TOWN
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2151445
Applicant(s)	Shaun Doherty.
Type of Application	Permission.
Planning Authority Decision	Grant permission.
Type of Appeal	Third Party
Appellant(s)	Peter and Aoife Tooher.
Observer(s)	None.
Date of Site Inspection	4 th February 2022.
Inspector	Barry O'Donnell

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1.0 Site Location and Description

- 1.1. The subject site has a stated area of 1.32ha and is located at Bluestack Drive, Lough Eske Road, approx. 350m north of Donegal Town centre. The site is located in a neighbourhood of mixed uses, including residential neighbourhoods at Drumrooske, Ros Mor and Orchard Park and industrial and commercial uses within Donegal Town Business Park (also identified as Drumrooske Business Park). There is also a derelict house adjacent to the access to the Business Park, on the opposite side of the road to the subject site.
- 1.2. The site itself is rectangular in shape and contains an incline that falls from a high point at the east corner, to a low point in the north-west corner. There were rushes towards the north end of the site at the time of my site visit and this part of the site was wet underfoot.
- 1.3. The site is bounded by Lough Eske Road to the south and south-east, a local access road to the west, detached residential properties to the north and east and the Ros Mór housing estate to the north-east. There are a mix of trees and vegetation along the north-east and south-west site boundaries and there is also a gabion wall along part of the north-east boundary, at the point of the shared boundary with Ros Mor. The south/south-east front site boundary is partly open and is partly bounded by a post and wire fence. There is no public footpath along the Lough Eske Road frontage of the site. A footpath runs parallel to the west/north-west boundary, providing access along this the Business Park.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the construction of 35 No. units in the following unit mix: -
 - 2 No. detached bungalows
 - 4 No. semi-detached bungalows
 - 17 No. 2-storey houses
 - 12 No. apartments in 3 No. 2-storey blocks

- 2.2. The proposed development also incorporates associated site works including storm water attenuation system and connection to all public services. A Natura Impact Statement was also submitted with the application.
- 2.3. The development is arranged around a carriageway that routes through the centre of the site, from which the majority of housing is directly accessed. Spurs off of this carriageway provide access to houses and apartments at the east end of the site. Units 1-22 are sited parallel to the west/north-west/north boundaries. The primary amenity space for the development is located adjacent to the shared boundary with Ros Mor. Units 23-35 are sited east of this open space and there is an additional, smaller parcel of open space adjacent to Lough Eske Road.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 2nd September 2021, subject to 18 conditions. The following are noteworthy in the context of the subject appeal: -

Condition 13 required the developer to consult with National Parks and Wildlife Service and Inland Fisheries Ireland regarding treatment of the headwall within the site, prior to the commencement of development.

Condition 14 required all mitigation measures within the NIS to be implemented in full

3.2. Planning Authority Reports

- 3.2.1. A planning report dated 30th August 2021 has been provided, which reflects the decision to grant permission. The report notes the recent planning history of the site (permission was refused by the Board in 2021 for a similar proposed development) and states that the only changes proposed are the addition of private amenity space in the form of balconies to first floor apartments and rearrangement of private open spaces serving the apartments. The report thereafter focusses the assessment on the reasons for refusal associated with the previous application. The proposed density and layout of development are stated to be acceptable, including proposed private open spaces to serve the apartment units. No concerns are expressed regarding access proposals or in respect of foul and surface water drainage proposals. The

report recommends that permission be granted, subject to 18 No. conditions, which are consistent with the Planning Authority's decision.

3.2.2. A separate appropriate assessment screening report is provided, wherein the Planning Authority determines that the development will not have a significant effect on any European site, alone or in combination.

3.2.3. Other Technical Reports

The **Roads Department** provided emailed comments dated 26th August 2021, which did not object to the development.

A **Building Control** report dated 17th August 2021 has been provided, which recommends a number of conditions as part of any grant of permission.

The Planning Report indicates that the Chief fire officer was also consulted on the application but did not provide a responding submission.

3.3. Prescribed Bodies

3.3.1. The Planning Report indicates that Irish Water was consulted on the application but did not make a responding submission.

3.4. Third Party Observations

3.4.1. A number of third-party observations were received, the issues raised in which can be summarised as follows: -

- Impacts of residential amenity
 - Overlooking
 - Privacy
 - Noise
- Design, layout and density
- Proposed tenure
- Flood risk
- Inadequate community facilities in the area
- Foul and surface water drainage
- Road and traffic safety

- Inadequate natura impact statement
- Impact on biodiversity
- The applicant has claimed ownership of third-party lands

4.0 Planning History

1951970 - ABP Ref. ABP-307901-20: Permission refused on 26th May 2021 for construction of 36 units (2 detached bungalows, 4 semi-detached bungalows, 18 2-storey houses and 12 apartments in 3 x 2-storey blocks) and associated site works including storm water attenuation system and connection to public services. Permission was refused for 2 reasons as follows: -

1. On the basis of the submissions made in connection with the application and appeal, and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development, individually or in combination with other plans or projects, would not be likely to have an adverse effect on the integrity of the Donegal Bay Special Protection Area (Site Code: 004151), Donegal Bay (Murvagh) Special Area of Conservation (Site Code: 000133) and Lough Eske and Ardnamona Wood Special Area of Conservation (site code: 000163) in view of the sites' conservation objectives, and by reason of the hydrological links arising on foot of the proposed storm water drainage arrangements. In such circumstances, the Board is precluded from granting permission.
2. The proposed development, by reason of its inadequate qualitative provision of private open space to serve the proposed apartment units, would conflict with the standards recommended in the 'Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities' published by the Department of Housing, Local Government and Heritage (December 2020), and, as such, would constitute an inappropriate form of development. The proposed development would, therefore, be contrary to Ministerial guidelines and to the proper planning and sustainable development of the area.

0820418 - ABP Ref. PL 05.234140: Permission refused on 14th December 2009 for a mixed-use development comprising 20 no. residential units, 3 no. retail units, office

use, car parking and all associated works. Permission was refused for 3 reasons as follows: -

1. Having regard to its location removed from the town centre of Donegal town, and the pattern of development in the area, it is considered that, by reason of its layout and design, including the form, scale and height of the buildings proposed, the proposed development would represent an inappropriate form of development at this location, would fail to integrate successfully with the surrounding development, and would result in a poor standard of urban design that would not comply with the policy R3 of the planning authority as set out in the current Donegal Town Local Area Plan or the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns and Villages)” issued by the Department of the Environment, Heritage and Local Government in May, 2009. The proposed development would seriously injure the amenities of the area and of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the layout and design of the proposed development, it is considered that the level of residential amenity for future residents of the scheme, in particular the apartments, would be poor by reason of deficiencies in private open space, lack of semi-private open space, the location of apartments in relation to offices, and the layout and quantum of car-parking proposed which would dominate the character of the scheme. The proposed development would seriously injure the amenities of the area and of property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Having regard to the provisions of the Donegal Town Local Area Plan 2005- 2011 and the recognised deficiencies in community facilities in the town, it is considered that, when taken in conjunction with existing and permitted residential development in the locality, the proposed development would be premature and contrary to the “Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas”, issued by the Department of the Environment, Heritage and Local Government in May 2009 which seek to ensure that facilities for social and cultural uses are provided in tandem with residential development to ensure the provision of sustainable neighbourhoods. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

5.1.1. Chapter 2A of the development plan contains the Core Strategy. Donegal Town is identified as a 'Level 2a' town. It is one of eight Level 2a towns, which are identified due to their existing population base, their infrastructural capacity to accommodate reasonable levels of new housing and their role as key service centres at the sub-county level.

5.1.2. Table 2A.6 contains the Core Strategy Table, identifying population and housing growth allocations for the various settlements in the county, over the plan period, and identifying housing land requirements, to accommodate this growth. The table sets out a requirement for 21ha of residentially zoned land in Donegal Town, to cater for a population growth allocation of 461 no. persons to 2024. This equates to 171 housing units, based on an occupancy of 2.7 persons/household. The table goes on to identify a total of 6.8 ha of "Primarily Residential – 1st phase" zoned lands, with a housing yield of 82 no. units based on an average density of 12 units per hectare.

5.1.3. Relevant policies include: -

CS-O-5: To support the growth of a network of 'Strategic Towns' (Layer 2) as key locations of population growth (providing for an additional approximate 4,500 persons by 2024) and/ or as places performing 'Special Economic Functions'.

CS-O-12: To require growth of towns in a sequential manner outwards from the core so as to make best use of existing and planned infrastructure to the benefit of local communities and effective urban growth.

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.

TV-P-4: It is a policy of the Council to ensure that development proposals within Town Centres or built up urban areas:

- Provide for distinctive buildings of a high architectural quality which contribute to a distinct sense of place and a quality public realm.

- Create strong street frontage by either, adhering to the established building line in the immediate area or establish a new building line immediately adjoining the public road adjoining where a reasonable opportunity exists to do so. A greater setback will be permitted where the development would provide for the creation a high quality urban place with sufficient landscaping/planning, street furniture etc.
- Respects, where appropriate, the context of the adjoining buildings, adjacent streetscape or buildings in the immediate area, in terms of design, height, scale and mass etc.
- Respects the style, architectural detailing (in terms of design/arrangement of fenestration, fascia/soffit treatment, general finishes and materials), eaves height, roof pitch, roof line, and overall building form and height, as appropriate, in areas characterised by traditional vernacular or high quality streetscape.
- Creates buildings of a human scale, by providing for a fine grain of development, in terms of overall scale, fenestration, size/proportions, signage and detailing and appropriate breaking of building forms along street frontages into narrow horizontal distances.
- Promote, where appropriate, visual interest through modulation and detailing of architectural elements (e.g. detailing/treatments of eaves, windows, frontages, slight variations in roof lines, setback etc).
- Utilise, where appropriate adaptable and accessible design on the ground floor to ensure their future re-use for alternative functions (e.g. retail/commercial etc).
- Avoid the use of industrial type cladding, or the glazing of extensive area of the proposed development.

UB-P-5: It is the policy of the Council to guide urban residential development in a sequential manner, outwards from the core area in order to maximise the utility of existing and future infrastructure provision, promote the achievement of sustainability, avoid 'leapfrogging' to more remote areas and to make better use of underutilised land subject to compliance with Article 6 of the Habitats Directive (where applicable).

UB-P-8: It is a policy of the Council that new residential developments shall be laid out and orientated in order to make use of the landscape characteristics including local features and vistas, and maximise opportunities presented from passive solar gain.

Development adjacent to amenity areas shall be orientated to face onto the amenity areas and provide maximum informal surveillance. Locating amenity areas to the rear of properties will not be permitted.

UB-P-9: It is a policy of the Council that direct pedestrian and cycle linkages shall be provided within proposals for new residential developments so as to interconnect with central amenity areas, adjoining neighbourhood developments and neighbourhood facilities subject to compliance with Article 6 of the Habitats Directive. Linkages shall be provided in addition to the primary access to the development and shall be designed to maximise passive surveillance from surrounding properties, be well lit and maintained and the materials and finish shall be of a high quality. Linkages that follow indirect routes and/or to the rear of properties shall normally not be considered acceptable.

UB-P-10: It is a policy of the Council that proposals for new residential development shall demonstrate that a housing density appropriate to its context is achieved, and provides for a sustainable pattern of development whilst ensuring the highest quality residential environment. Lower density ranges may be required having regard to the density and spatial pattern of development on lands that abut the site. In addition, housing densities will be considered in the light of all other relevant objectives and policies of this Plan, including the objectives and policies set out in Chapter 2A, Core Strategy.

UB-P-11: Proposals for residential development shall provide a mixture of house types and sizes in order to reasonably match the requirements of different household categories within the Plan area, including those groups with particular special needs. The Council will seek to achieve a balance of housing stock to meet the needs and aspirations of the people residing within the Plan 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.

Policy UB-P-13: requires that large residential infill sites shall reserve 10% of the site area as a public amenity area, which shall, inter alia, be conveniently located in the development, be of high-quality design and providing for multi-functional uses, provide

adequate lighting and signage and highly accessible linkages with the surrounding footpath network.

5.2. Seven Strategic Towns Local Area Plan 2018-2024

5.2.1. Map 6 of the local area plan is the land-use zoning map for Donegal Town. It identifies that the site is subject to the “Primarily Residential” zoning, with an objective ‘*To reserve land primarily for residential development to supply immediate housing need.*’

5.2.2. The site is also identified as site ‘PR2’ and Table 9.1 of the plan identifies that it has an area of 1.267 ha and with the capacity to deliver 15 no. housing units. Policy DT-H-2 relates to the site, stating thus: -

Policy DT-H-2: It is a policy of the Council that any proposal for residential development on ‘Primarily Residential’ site PR2 shall demonstrate a layout that does not result in a material negative impact on the residential amenities of existing properties to the east boundary in addition to compliance with all other relevant policies of this LAP.

5.2.3. Other relevant policies include: -

Policy GEN-H-2: It is a policy of the Council to consider proposals for multiple residential development (i.e. 2 or more units) on lands zoned ‘Primarily Residential’ and on specified ‘Opportunity Sites’ on the accompanying land-use zoning maps (Map1- 7) and also to consider proposals for residential development on lands within the defined town centres and ‘Established Development’ areas, subject to compliance with the specific policies for each individual settlement and with all other relevant policies of this LAP, compliance with the Habitats Directive and all other material planning considerations including environmental considerations.

Policy GEN-H-10: It is a policy of the Council that applications for housing on lands zoned ‘Primarily Residential’ shall have regard to the indicative housing yields for each site set out in this LAP and in the event the proposed housing density and consequent yield of housing units diverges significantly from the indicative housing yields, the applicant shall demonstrate that the proposal is: (i) in keeping with the density of surrounding development and; (ii) would not have adverse impact on the amenities of adjoining properties, (iii) would otherwise come with all other objective and policies of this LAP and the requirements of the Habitats Directive and all material planning

considerations including environmental considerations, and (iv) would not materially affect the Core Strategy of the CDP.

5.3. National Planning Framework

- 5.3.1. The National Planning Framework provides an overarching policy and planning framework for the social, economic and cultural development of the country. The NPF sets out 75 no. National Policy Objectives including the following:

NPO3c: Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints.

NPO 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.

NPO11: 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.

NPO 13: In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

NPO 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

NPO35: Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

5.4. Northern and Western Regional Assembly Regional Spatial and Economic Strategy 2020-2032

- 5.4.1. The RSES reflects the NPF objectives in relation to compact urban development and highlights that the health of villages and towns in the Region can be significantly

influenced through the delivery of new housing by utilising existing buildings, brownfield/infill sites or otherwise.

5.5. Ministerial Guidelines

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

5.5.1. Section 6.8 of the Guidelines states that, for small towns, schemes should be designed to: (1) make the most effective use of the site; (2) make a positive contribution to its surroundings; (3) have a sense of identity and place appropriate to the character of the area; (4) provide for effective connectivity, especially for pedestrians and cyclists; (5) include a design approach to public spaces that is guided by the best principles of passive surveillance.

5.5.2. Regarding density, the Guidelines advise that for edge of centre sites, the emphasis will be on achieving a successful transition from central areas to areas at the edge. Given the transitional nature of such sites, densities to a range of 20-35 dwellings per hectare are identified as being appropriate including a wide variety of housing types from detached dwellings to terraced and apartment style accommodation.

Quality Housing for Sustainable Communities (2007)

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

Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2020)

5.5.4. The Guidelines set out standards for apartment developments, with the aim of ensuring that such developments are an attractive and desirable housing option in the future. Standards provided within the Guidelines include: the mix of units to be provided, minimum size thresholds for 1-bed, 2-bed and 3-bed units, the orientation and internal layout of units and private open space provision.

5.6. Natural Heritage Designations

5.6.1. The site is not within or adjacent to any European site. The closest designated sites are Lough Eske and Ardnamona Wood SAC, which is 0.4km south and Donegal Bay SPA and Donegal Bay (Murvagh) SAC, which are 0.5km south. Meenaguse/Ardbane Bog SAC is further away, located approx. 6 km to the north-west of the site.

5.7. EIA Screening

5.7.1. The proposed development falls within the category of '*Infrastructural Projects*', under Schedule 5, Part 2 of the Planning and Development Regulations 2001-2020, where mandatory EIA is required in the following circumstances:

10(b) (i) Construction of more than 500 dwelling units.

(iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.

5.7.2. The subject development a development of 35 houses, on a site with a stated area of 1.32ha. The proposed development falls well below the development threshold and mandatory EIA is therefore not required.

5.7.3. I have considered whether sub-threshold EIA is required. The introduction of a smallscale, low-density residential development on serviced lands, which are within the built-up area of Donegal town and which are proximate to the town centre, will not have an adverse impact in environmental terms on surrounding land uses. The site is not designated for the protection of the landscape or of natural or cultural heritage and, subject to incorporation of mitigation which controls surface water discharges from the site that contain suspended solids or pollutants, the development is not likely to have a significant effect on any designated European site (this is discussed in detail at Section 7.7 of my report). The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water supply and would connect to the public foul and surface water drainage networks, upon which the effect of the development would be marginal.

5.7.4. Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site on serviced lands that are within the built-up area of Donegal Town,

- The location of the site outside of any sensitive location specified in Article 109 of the Planning and Development Regulations 2001 (as amended) and the mitigation measures proposed to mitigate the impact of the development on any such site,
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination a sub-threshold environmental impact assessment report for the proposed development was not necessary (See Preliminary Examination EIAR Screening Form).

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows: -

- External layout
 - Ground floor units do not appear to have dedicated private open space allocated
 - Spaces to the rear of apartments, that may be intended as private open spaces, contain storage sheds for other apartments and would require other tenants to pass through the space to access the shed.
 - Issues with private open space that were highlighted in the assessment of the previous application have not been addressed.
 - It is unclear whether the minimum 1.5m depth for the terrace has been provided.
- Internal layout

- Storage: Apartments appear to be under-provided with storage space but appear to use the external shed for this purpose. The apartment guidelines allow for half of the required storage to be provided externally.
- Ceiling Heights: Section drawings provided with the application do not clearly identify the floor to ceiling height for ground floor apartments, which is estimated to be c.2.4m. The 2020 apartment guidelines require incorporation of 2.7m floor to ceiling heights for ground floor apartments.
- Sightlines
 - The application refers to the Design Manual for Roads and Bridges (a UK document) rather than the Design Manual for Urban Roads and Streets. DMURS requirements for stopping distances are more stringent than the DMRB.
 - The proposed south-west sightline is partially located outside the red line and encroaches onto a private roadway. No letter of consent has been provided for the use of this area.
- Footpath
 - The applicant claims ownership of the footpath and right of way along the western site boundary, which has existed for over 20 years and which was provided with the consent of the previous owner and which is used daily by people accessing Donegal Town Business Park.
- Application form
 - Section 14 of the application form states that there are 36 units proposed, which is inconsistent with the rest of the application documents.

6.2. Applicant Response

6.2.1. A first party response to the appeal was submitted on behalf of the applicant, on 27th October 2021, by O'Connor Burke Architecture, the contents of which can be summarised as follows: -

- The current application
 - The proposed development is a modification of a previously refused development, which was refused for 2 technical reasons. In all other respects,

the development was deemed to be appropriate and other grounds of appeal were found to be baseless.

- The current application is identical to the previous application, except for the inclusion of a natura impact statement and revisions to the layout to (a) provide first floor apartments with individual balconies that are additional to ground-level private open space, (b) ground floor apartments are now provided with direct access to private open space from the living area.
- Clarifications in response to the appeal
 - Ground floor apartments are provided with private amenity space, as is shown on the submitted plans.
 - Boundary treatments for the private amenity areas are shown on the submitted plans.
 - Balconies incorporate a depth of 1.5m.
 - There is no under-provision of storage space.
 - Floor to ceiling heights of 2.7m are encouraged and not required, which was confirmed by the previous Inspector.
 - Visibility splays/stopping distances are identical to the previous application and were deemed acceptable by the Board.
 - The footpath is located on the applicant's land. Land ownership is a civil matter.
 - The development is for 35 units.
 - The current appeal is vexatious and without foundation and should be dismissed as it does not satisfy the tests provided at S138 (1)(a) of the Act.
- Policy context
 - The site is zoned for residential development and the development is consistent with policies and objectives of the development plan and local area plan, in particular UB-O-2 of the LAP.
 - The site is the nearest and most accessible residentially zoned site to the town core area and is the most appropriate location for social housing, beside retail services and within walking distance of the town core.

- The site is serviced and is infill and the principle of development was deemed to be acceptable by the Board previously.
- Proposed layout
 - Assessment of the layout, scale and design of the development by the Board previously determined that it was largely acceptable, but deficiencies were identified in respect of private open space. These deficiencies have been addressed by this application, through incorporation of appropriately sized balconies, that are additional to ground level private open space
 - Ground floor apartments now have direct access to private open space, from the living area.
 - Regarding storage space, each apartment is provided with between 2.8sqm-3.4sqm internal storage, with additional external space provided in the private amenity spaces.
 - Regarding floor to ceiling heights for ground floor apartments, the appellant fails to acknowledge the minimum requirement is 2.4m and that a height of 2.7m is encouraged. The proposed floor to ceiling height has been deemed acceptable by the Planning Authority. Should the Board deem it necessary, the applicant is willing to provide 2.7m floor to ceiling heights for the affected units, as a minor modification to the scheme. Alternative drawing Nos. 1810.14 Rev A and 1810.15 Rev A are provided, which reflect this.
- Sightlines/footpath
 - The site is located within the 50km/h speed zone and both the DMRB and DMURS have the same requirement for sightlines.
 - The existing footpath is in the applicant's ownership and it will be retained as part of the scheme, given its public access function. Sightlines do not interfere with this public access.
- Density
 - Policy GEN-H-10 allows for a case to be made for divergent densities on primarily residential zoned land. The proposed density is not significant and will not have a material effect on the LAP Core Strategy.

- The previous Inspector considered the proposed density to be acceptable and it is reasonable to expect that it would continue to be seen as acceptable.
- The development will have an identical impact on residential amenity to the previously refused development, which was deemed to be acceptable. The appellant has not raised any amenity issues in the grounds of appeal, having done so in the submission to the Planning Authority.
- The previous appeal determined that the development would not likely result in significant negative impacts on local infrastructure. The Planning Authority has also confirmed that there is capacity in community services and infrastructure, to accommodate the development.
- The application is accompanied by a natura impact statement, which confirms that the development is not likely to have an adverse impact on any European site, alone or in combination. The Planning Authority concurs with this finding.

6.3. Planning Authority Response

6.3.1. A submission was received on 22nd October 2021, the contents of which can be summarised as follows: -

- The application seeks to overcome previous reasons for refusal, with other aspects of the development remaining as originally proposed. These other aspects of the development were deemed by the Board to be in accordance with policy requirements.
- The application incorporates changes to proposed private open spaces for individual apartments, in response to concerns expressed by the Inspector on the refused development, and the proposed balconies conforms to the requirements of the 2020 apartment guidelines.
- Issues raised regarding the pedestrian footpath and land ownership are not considered material to the assessment of the application.
- The subject site comprises zoned land that is proximate to the town centre and a range of services, and there is a housing need in Donegal Town. The development is in accordance with the provisions of the National Planning Framework.

- The development is also in accordance with the policies and objectives of the Donegal Town Local Area Plan 2018-2024 and the County Development Plan 2018-2024.
- The Board is requested to uphold the decision to grant permission.

6.4. Observations

6.4.1. None

6.5. Prescribed Bodies

6.5.1. The appeal was circulated to the Minister for Culture, Heritage and the Gaeltacht (DAU), An Taisce and The Heritage Council. No responding submissions were 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:

- Principle of development;
- Layout and residential amenity;
- Impact on neighbouring properties;
- Road Safety, access and parking;
- Other Issues;
- Appropriate Assessment.

7.2. Principle of Development

7.2.1. Donegal Town is identified by the county development plan as a 'Layer 2A' town and Section 2A.3.3 states that it (along with other towns in this layer of the settlement hierarchy) is so-identified due to its existing population base and due to its infrastructural capacity to accommodate reasonable levels of new housing. In accordance with this designation, Core Strategy Table 2A.6 provides Donegal Town with an allocation of planned housing growth over the plan period, identifying a requirement for 21ha of residentially zoned land in the town over the plan period.

- 7.2.2. The Seven Strategic Towns Local Area Plan contains the zoning map for Donegal Town, Map 6, and the site is identified as being subject to the “Primarily Residential” zoning, with an objective ‘*To reserve land primarily for residential development to supply immediate housing need.*’ In addition to this, I note that the site is also identified as site ‘PR2’ and Table 9.1 identifies that it has the capacity to deliver housing.
- 7.2.3. I am satisfied that the proposed development is consistent with the Primarily Residential zoning and it will also contribute to delivery of the development plan Core Strategy, subject to compliance with other relevant policies and objectives, in particular Policy DT-H-2 of the local area plan, which requires that proposals for the development of the site shall demonstrate a layout that does not impact on the residential amenities of adjacent residential property. Consideration is given to the proposed layout and impacts on adjacent property in subsequent sections of my Report.

7.3. Layout and Residential Amenity

- 7.3.1. The proposed layout sees housing located parallel to the south-west and north-west site boundaries and with a cluster of 13 units in the central part of the site. The cluster of houses in the centre of the site are accessed via spurs from the main carriageway that routes through the centre of the site. A primary area of public open space is located toward the rear of the site and a secondary area of open space is located adjacent to Lough Eske Road. The Planning Statement submitted with the application states that the development has been designed for occupation by older people and has the same mix of house types and unit sizes as the previously refused proposal.
- 7.3.2. The Board’s previous refusal Order on the site (ABP Ref. ABP-307901-20 refers) included a refusal reason in relation to inadequate qualitative provision of private open space to serve proposed apartments, which would conflict with the 2020 apartment guidelines.
- 7.3.3. The appellant has expressed concerns regarding a number of aspects of the internal and external layout of the development, including in relation to the layout and practical usability of private open spaces for proposed apartments, the quantum of storage space provided for each apartment and proposed floor to ceiling heights for ground floor apartments.
- 7.3.4. The applicant, in their response to the appeal, states that the development has been revised following the previous refusal, including in relation to the quantum and location

of private open space for apartments. The applicant also states that there is no under-provision in respect of storage space and argues that floor-to-ceiling heights of 2.7m are encouraged but are not required.

- 7.3.5. I note that the previous Inspector considered the proposed layout to be acceptable, stating that the proposed development constitutes an appropriate urban design response to the subject site and its surrounding context, in terms of its layout and scale. In my opinion the scale, design and layout of the development continue to be acceptable, presenting an appropriate urban design response to the site and its urban context. The development contains primarily 2-storey buildings, in a mix of apartments, semi-detached and terraced housing and a number of single storey houses. 2-storey building heights are incorporated over the majority of the site and with a transition down to single storey heights at the rear of the site, adjacent to adjoining residential property. The primary public open space area is located adjacent to the shared boundary with Ros Mor and maintains an appropriate relationship between the proposed development and this established estate.
- 7.3.6. The proposed density of 26.5 units/ha is above that identified for the site by the local area plan (table 9.1 of the LAP identifies 15 units to be provided on the site) but I agree with the previous Inspector's comments, that it is acceptable in view of national and regional planning policies that support more compact forms of development to ensure the most sustainable use of urban land and also in view of the site's close proximity to the town centre.
- 7.3.7. A footpath extension is incorporated along the Lough Eske Road frontage of the site. I note that condition No. 18 of the Planning Authority's decision required payment of a financial contribution, under S48(2)(c) of the Act, towards footpath infrastructure which will facilitate the development. Section 48(2)(c) is clear that specific exceptional costs should arise in order to justify any request for a special contribution. The *Development Management Guidelines* outlines that for such a condition to be attached by a planning authority, it is essential that the basis for the calculation of a contribution should be explained in the planning decision, including identifying the nature/scope of works, the expenditure involved and the basis for the calculation, including how it is apportioned to the particular development. Such details have not been provided in this instance and, on this basis, I consider the condition does not satisfy the requirements of Section 48(2)(c) and should be omitted, should the Board decide to grant permission.

7.3.8. Regarding internal layout, as no accommodation schedule was provided with the application, I have considered the floor plan drawings provided and I note that the proposed units remain identical to the previously refused proposal, which the Board considered to be acceptable. The layout of the development entails:

- 12 No. 2-bed, 3-person apartments which range in size between 68.8sqmm-79.8sqm
- 23 No. detached/semi-detached/terraced houses comprised of the following: -
 - 2 No. 2-bed, 3-person detached bungalows with an area of 70.5sqm.
 - 4 No. 2-bed, 3-person semi-detached bungalows with an area of 67.9sqm.
 - 6 No. 2-storey semi-detached, 2-bed houses with an area of 88sqm.
 - 6 No. 2-storey semi-detached, 3-bed houses with an area of 99.6sqm.
 - 2 No. 2-storey semi-detached, 4-bed houses with an area of 128sqm.
 - 2 No. 2-storey terraced, 3-bed houses with an area of 99.6sqm.
 - 1 No. 2-storey terraced, 2-bed houses with an area of 88sqm.

7.3.9. All 12 of the proposed apartments are 2-bed, 3-person units. Section 3.7 of the 2020 apartment guidelines makes provision for a maximum of 10% of apartments to be 2-bed, 3-person units, with a minimum floor area of 63% and it is given that all other 2-bed units should have a minimum floor area of 73sqm. In this instance, 6 or 50% of the apartments have a floor area of less than 73sqm, and are thus non-compliant with the guidelines. However, and notwithstanding this, the allowance for 2-bed, 3-person units is not a Specific Planning Policy Requirement (SPPR), so the Board has some discretion over its application.

7.3.10. Section 3.7 of the guidelines states that the reason for this 10% allowance is to allow for necessary variation in dwelling size but it also states that it would not be desirable that this type of 2-bed unit would displace 2-bed, 4-person units. In this instance, this type of unit accounts for 50% of all apartments and is, in my opinion, an overly dominant component of the residential mix. In order to ensure compliance with the apartment guidelines in respect of unit mix and size, I recommend that, should the Board decide to grant permission, a condition be attached requiring that apartment units GF Apt 1 and FF Apt 3 shown on drawing No. 1810 07 be provided as 2-bed, 3-

person units (2 units total) and that units GF Apt 1 and FF Apt 3 shown on drawing No. 1810 14 (4 units total) shall be provided as 1-bed units.

- 7.3.11. The appellant points out that a number of units are under-provided for, in terms of dedicated storage space. Having considered the floor plan drawings, I note that proposed apartments and house Nos. 17-24 are under-provided for, in terms of internal storage space. These units are provided with storage space of between 2.3sqm-4.9sqm.
- 7.3.12. In acknowledging the shortfall, the applicant states that 2.5sqm external storage sheds have been provided for each unit, within the external garden area. This approach is in accordance with Section 3.33 of the apartment guidelines, which allows for 50% of the storage requirements of individual apartments to be satisfied through the provision of secure ground-level storage. In view of this, I consider the applicant's approach to the provision of dedicated storage space is acceptable.
- 7.3.13. Regarding private open space, each ground floor apartment is provided with an external garden of minimum area 44sqm, accessible from the rear of the unit, and following the Board's previous refusal, first floor apartments are now each provided with a balcony of minimum area 6.3sqm and, in addition, each first floor unit is also provided with an external garden of minimum area 23sqm. I have considered the balcony proposals for first floor apartments and I note that each exceeds the minimum requirements of the 2020 apartment guidelines. In view of the foregoing, I consider private open space proposals are acceptable.
- 7.3.14. Rear gardens for the proposed houses range in depth, between 7.8m-12m. The overall area of the gardens is unstated, but I consider they are acceptable.
- 7.3.15. Regarding floor to ceiling heights, SPPR 5 of the 2020 apartment guidelines requires as follows: -
- 'Ground level apartment floor to ceiling heights shall be a minimum of 2.7m and shall be increased in certain circumstances, particularly where necessary to facilitate a future change of use to a commercial use. For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, planning authorities may exercise discretion on a case-by-case basis, subject to overall design quality.'*

- 7.3.16. Having considered SPPR 5, I consider the provision of 2.7m floor-to-ceiling heights for ground floor units is mandatory in this instance, rather than discretionary. On review of the section drawings, I note that floor to ceiling heights of 2.4m are provided for the ground floor apartments, below the minimum requirements of SPPR 5.
- 7.3.17. Compliance with the requirements of SPPR 5, which would have the effect of raising the height of the affected buildings by 300mm, would not in my view have any material or adverse impact on visual or residential amenities in the area. I am therefore satisfied that compliance with SPPR 5 can be controlled through condition, should the Board decide to grant permission. I note in this respect that as part of the applicant's appeal response submission, alternative drawing Nos. 1810.14 Rev A and 1810.15 Rev A were provided, which depict the provision of 2.7m floor to ceiling heights for ground floor apartments.
- 7.3.18. Two areas of communal open space are identified and the Planning Statement states that they occupy 16.7% of the site, exceeding the development plan requirement for 10% of the site area to be provided. Both areas benefit from passive surveillance from housing within the development and I am satisfied that they will provide adequate usability for residents in the future. I note that landscape drawings were provided to the Planning Authority, which identify- the provision of a play space in the centre of the main open space area. In the context of the applicant's statement that the development has been designed for occupation by older people I would question the provision of a play space as shown. Notwithstanding this, I am satisfied that the detailed layout of the open spaces can be agreed with the Planning Authority, should the Board decide to grant permission.

7.4. Impact on Neighbouring Properties

- 7.4.1. The site is adjoined by residential properties to the north-west, where there is a detached house, and north-east, where the Ros Mor estate and a detached house are located.
- 7.4.2. I do not consider the proposed development would have any undue or unacceptable impact on the amenity of adjacent residential occupiers, in view of the proposed layout, which sites single storey housing adjacent to the shared boundary with the north-west adjoining property and which sites the main open space area adjacent to the shared boundary with the Ros More estate.

7.4.3. I note that as part of the previously refused development, amendments to the proposed layout and house mix were incorporated at the additional information stage, which sought to address concerns which had been raised. In my view, that revised layout, which is proposed as part of the proposed development, provides for an appropriate relationship between the development and adjacent residential occupiers.

7.5. Road Safety, Access and Parking

7.5.1. As I have stated previously, the proposed development is accessed via a single access point from Lough Eske. The main carriageway routes through the centre of the site, with the majority of units accessed directly from it and with units 23-35 accessed via spurs off of this main carriageway.

7.5.2. The appellant has expressed concerns regarding the adequacy of achievable sightlines and has expressed concerns regarding the existing footpath that runs parallel to the west site boundary and which provides pedestrian access to Donegal Town Business Park.

7.5.3. As the applicant states, the site is located within the 50km/h speed zone and the *Design Manual for Urban Roads and Streets* (DMURS) advises that in such locations sightline distances of 45m should be provided in both directions from the site access. The site layout drawing identifies that sightlines of 2.4m x 54.6m south-west and 2.4m x 74.6m north-east can be provided from the access, in excess of the DMURS advice. On the basis of the foregoing, I am satisfied that proposed visibility sightlines are acceptable. I also note that retained sightlines from the road access to the Business Park are shown to exceed the DMURS advice.

7.5.4. Regarding the appellant's concerns in relation to the south-west sightline, the site layout drawing indicates that this sightline includes part of the access road to Donegal Town Business Park. This part of the access road is very likely to remain free of obstructions which would impede visibility from the subject site and I therefore do not object to its inclusion within the sightline.

7.5.5. Regarding the concerns over the existing footpath that runs parallel to the west site boundary, I note that, as the applicant states, this footpath is shown on the site layout drawing as being retained as part of the proposed development. From the information available to me, I see no reason to question the future viability of the footpath, following completion of the proposed development.

7.5.6. The development incorporates 58 parking spaces. The application form states that spaces are provided as follows:

	2-bed	3-bed	4-bed
No. of units	23	10	2
No. of spaces	34	20	4

7.5.7. Whilst I consider the overall quantum of spaces and the proposed parking layout is acceptable, I note that the site layout drawing does not clearly identify the per-unit allocation of spaces. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the parking layout and allocation of spaces with the Planning Authority.

7.6. Other Issues

7.6.1. Surface water is identified on the application form as being drained to the Drumrooske-Middle stream, via attenuated discharge. Road & Drainage Layout drawing (No. 01 Rev A) identifies that an AquaCell system would provide 171m³ of storage and that an oversized pipe network would provide an additional 21m³ of storage (192m³ total). An existing surface water pipe from the Ros Mor estate, which currently routes through the site, is also incorporated into the proposed system, which allows for a single point of discharge to the stream. Details of site characteristics and design calculations underpinning the proposed system have not been provided as part of application. I note that the matter was assessed by the Planning Authority as part of the previously refused development, including through the submission of additional information and I note that the Planning Authority has not objected to this aspect of the proposed development.

7.6.2. Whilst I consider the principle of attenuated discharge to the stream is acceptable, I have concerns regarding the level of information provided in relation to the proposed surface water drainage system, particularly in the context of the direct connection of the stream to the River Eske (the Lough Eske and Ardnamona Wood SAC) and the vulnerability of species within the river to water quality impacts and sedimentation. This is discussed in further detail at Section 7.7 of my report, Appropriate Assessment.

7.6.3. Foul water is identified on the application form as being drained by a new connection to the public sewer. The planning report on the application indicates that Irish Water

was consulted on the application but did not provide a response. There is nothing within the appeal documents to suggest that a connection to the public network cannot be provided and, in view of this, I consider it would be unjustified to refuse permission on the basis of foul water capacity.

- 7.6.4. The appellant identifies that Section 14 of the application form incorrectly identifies that the proposed development comprises the construction of 36 units in total. I am satisfied that this is an error, which did not jeopardise third party participation with the application, and that the proposed development is accurately described within the public notices. I note that the Planning Authority, which has responsibility for validation of the application, did not express any concerns regarding this error.

7.7. Appropriate Assessment

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 7.7.1. 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

- 7.7.2. The applicant submitted a Natura Impact Statement (NIS) as part of the application, prepared by Earthy Matters Environmental Consultants. It provides a description of the proposed development, identifies European sites within a possible zone of influence and identifies potential impacts in relation to Lough Eske and Ardnamona Wood SAC (Site Code 000163), Donegal Bay (Murvagh) SAC (Site Code 000133) and Donegal Bay SPA (004151).

- 7.7.3. Having reviewed the appeal documents provided and submissions, I am satisfied that there is adequate information in relation to the European sites to allow for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

Need for Stage 1 Appropriate Assessment Screening

- 7.7.4. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken on any plan or project not directly connected with or necessary to the

management of a European site but likely to have a significant effect on the site in view of its conservation objectives.

- 7.7.5. The proposed development is not directly connected with or necessary to the management of a European site and accordingly is subject to the provisions of Article 6(3).

Brief Description of the Development

- 7.7.6. The applicant provides a description of the proposed development at Section 3 of the NIS. The development is also described at Section 2 of this Report. In summary, permission is sought for the construction of 35 No. units (12 no. apartments and 23 no. houses) and associated site works, including storm water attenuation system and connection to all public services. The development includes the provision of vehicular parking bays and communal open spaces and a footpath extension along Lough Eske Road. The site is situated on Lough Eske Road, approx. 350m from the centre of Donegal Town (measured in a direct line). The site is served by the public potable and foul water networks. Foul water is proposed to drain to the public network, via connection on Lough Eske Road. Surface water is proposed to drain via attenuated discharge to a stream approx. 20m south of the site, identified by the NIS as the Drumrooske-Middle stream. The site is located approx. 0.4 km north of Lough Eske and Ardnamona Wood SAC and approx. 0.5 km north of Donegal Bay SPA and Donegal Bay (Murvagh) SAC.
- 7.7.7. The proposed development comprises a revised application, following previous refusal by the Board (ABP-307901-20 refers) for reasons which included that the Board could not be satisfied, on the basis of the information provided, that the proposed development, individually or in-combination with other plans or projects, would not be likely to have an adverse effect on the integrity of Donegal Bay SPA, Donegal Bay (Murvagh) SAC, and Lough Eske and Ardnamona Wood SAC.
- 7.7.8. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, I consider the following potential impact mechanisms require examination:

Construction phase

- Loss of ex-situ habitat used by species of conservation interest (SCI) and disturbance of SCI within Donegal Bay SPA.
- The impact of potential surface water discharges from the site on water quality within Donegal Bay SPA, Lough Eske and Ardnamona Wood SAC or Donegal Bay (Murvagh) SAC

Operational Phase

- The impact of surface water discharges from the development on water quality within Donegal Bay SPA, Lough Eske and Ardnamona Wood SAC or Donegal Bay (Murvagh) SAC.

Submissions and Observations

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

European Sites

7.7.10. The development site is not located in or immediately adjacent to a European site. The closest European sites are Lough Eske and Ardnamona Wood SAC, which is 0.4km south and Donegal Bay SPA and Donegal Bay (Murvagh) SAC, which are 0.5km south, extending up to the south side of the bridge that crosses the River Eske, on Bridge Street.

7.7.11. The NIS states that there are five other European sites within a 10km search zone, Meenaguse/Ardbane Bog SAC (Site Code 000172), Dunragh Loughs/Pettigo Plateau SAC (Site Code 000775), Durnesh Lough SAC (Site Code 000138), Durnesh Lough SPA (Site Code 004145) and River Finn SAC (Site Code 002301). The NIS states that there are no hydrological pathways to Meenaguse/Ardbane Bog SAC, Dunragh Loughs/Pettigo Plateau SAC, Durnesh Lough SAC and River Finn SAC. Regarding Durnesh Lough SPA, the NIS states that as the development is located north of Donegal Bay SPA, it is not located within the connecting corridor between the two SPA sites.

7.7.12. Sites further than 10km but within 15km were reviewed but were deemed unlikely to be affected by the development.

7.7.13. Table 1 of the NIS contains a summary of the European sites located within the 10km search zone. A summary of those considered further within the Screening stage

assessment is set out below. A summary of the other identified European sites within 10km is contained at Appendix 1.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor)
<u>SPA</u>			
Donegal Bay SPA (Site Code 004151)	<ul style="list-style-type: none"> • Great Northern Diver, • Light-bellied Brent Goose, • Common Scoter, • Sanderling, • Wetland and Waterbirds. 	0.5km south	Yes
<u>SAC</u>			
Lough Eske and Ardnamona Wood SAC (Site Code 000163)	<ul style="list-style-type: none"> • Oligotrophic waters containing very few minerals of sandy plains, • Petrifying springs with tufa formation, • Old sessile oak woods with Ilex and Blechnum in the British Isles, • Freshwater Pearl Mussel, • Salmon • Killarney Fern 	0.4km south	Yes
Donegal Bay (Murvagh) SAC (Site Code 000133)	<ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide, • Fixed coastal dunes with herbaceous vegetation, • Dunes with Salix repens ssp. Argentea, • Humid dune slacks • Harbour Seal 	0.5km south	Yes

7.7.14. In respect of Screening, the report concludes that: -

'In order to determine the potential impacts, if any, of the proposed dwelling development and related activities, an Appropriate Assessment Screening process was undertaken. It has been shown that of the European protected sites identified within the 10km radius, the proposed development has the potential to impact on Lough Eske and Ardnamona Wood SAC (000163), Donegal Bay (Murvagh) SAC (000133) and Donegal Bay SPA (004151). In accordance with Article 6(3) of the Habitats Directive, it is recommended that a full Appropriate Assessment Stage 2 be carried out in order to further examine the risk of the project development to the conservation interests of the identified designated conservation sites.'

Construction phase impacts

7.7.15. As has been outlined already, I consider that (a) potential loss of suitable ex-situ habitat used by species of conservation interest (SCI) within Donegal Bay SPA and disturbance of SCI and (b) the impact of potential surface water discharges from the site on water quality within Donegal Bay SPA, Lough Eske and Ardnamona Wood SAC or Donegal Bay (Murvagh) SAC need to be considered.

7.7.16. Regarding the potential for loss of ex-situ habitat, the issue is not discussed by the Screening assessment undertaken within the NIS but I have nevertheless considered the issue, with reference to the SPA Supporting Document (NPWS, 2012).

7.7.17. Regarding Great Northern Diver, Common Scoter and Sanderling, the site does not contain wetland habitats that these SCI are dependent on, so the development will not result in the loss of suitable ex-situ habitat for these SCI. Regarding Light-Bellied Brent Goose, given the site is overgrown and is in an urban context where there is a high level of activity and disturbance, I consider it is unlikely to be suitable for foraging use. I therefore consider the development is not likely to result in the loss of suitable ex-situ habitat for these SCI.

7.7.18. In relation to the impact of potential surface water discharges from the site on water quality within each of the European sites, the Screening assessment undertaken within the NIS states that construction activity could cause an increase in surface water runoff and a deterioration in water quality. Leaks, spillages and discharge of pollutants are also identified as having the potential to impact on water quality within the Eske

River and Donegal Bay, which are hydrologically linked to the site via the Drumrooske-Middle stream.

- 7.7.19. I concur that run-off containing suspended solids has the potential to affect water quality within the Drumrooske-Middle stream, given the close proximity of the Drumrooske-Middle stream to the site and the local gradient that is likely to direct run-off from the site toward the stream. Available EPA mapping¹ indicates that the Drumrooske-Middle stream flows south-ward from Lough Eske Road to its confluence with the River Eske approx 400m south of the site and this point of confluence lies within the Lough Eske and Ardnamona Wood SAC. Given the close proximity of the European site, I consider the proposed development has the potential to result in the deterioration of water quality within the European site.
- 7.7.20. I note that the River Eske is identified by Section 4.2 of the NIS as being an important habitat for Salmon and Freshwater Pearl Mussel (FPM). Both species are vulnerable to discharges containing suspended solids or pollutants.
- 7.7.21. The River Eske flows eastward, into Donegal Bay. The Bay contains the Donegal Bay SPA and Donegal Bay (Murvagh) SAC, which lie within c.360m of confluence of the stream with the River Eske (measured in a direct line). I am satisfied that the risk of significant effects on these European sites is low, in light of the separation distance between the site and the Bay and the smallscale nature of the development. Indeed, in the unlikely event that a discharge from the site was transferred to the Bay, the quantity is unlikely to be of such a scale that significant effects would arise. I am therefore satisfied that the potential for likely significant effects on qualifying interests within the Donegal Bay SPA and Donegal Bay (Murvagh) SAC can be excluded.
- 7.7.22. I have not relied on mitigation measures identified within the NIS, in reaching this conclusion in respect of Donegal Bay SPA and Donegal Bay (Murvagh) SAC.

Operational phase impacts

- 7.7.23. As has been outlined previously, I consider that the impact of surface water discharges from the development on water quality within Donegal Bay SPA, Lough Eske and Ardnamona Wood SAC or Donegal Bay (Murvagh) SAC needs to be considered.

¹ <https://gis.epa.ie/EPAMaps/>

- 7.7.24. Attenuated surface water is proposed to discharge to the Drumrooske-Middle stream, which, as I have stated before, flows into the River Eske and the Lough Eske and Ardnamona Wood SAC, approx 400m south of the site. The point of confluence lies within the Lough Eske and Ardnamona Wood SAC and the River Eske subsequently flows into Donegal Bay and the Donegal Bay SPA and Donegal Bay (Murvagh) SAC.
- 7.7.25. Regarding Lough Eske and Ardnamona Wood SAC, details of site characteristics or design calculations have not been provided as part of application so I have not been able to determine whether the system is adequate to serve the development. Section 4.2 of the NIS states that the attenuation system is a Wavin AquaCell System and that it incorporates a hydrobrake discharge. The Section identifies that this system was developed at the design stage, following consideration of the pathways that would give rise to potential adverse impacts. Taking a precautionary approach, the potential for likely significant effects on qualifying interests within the Lough Eske and Ardnamona Wood SAC cannot be excluded at this stage, on the basis of the information provided.
- 7.7.26. Regarding Donegal Bay SPA and Donegal Bay (Murvagh) SAC, similar to the construction phase assessment, I am satisfied that the risk of significant effects on these European sites is low, in light of the separation distance between the site and the Bay and the smallscale nature of the development. Indeed, in the unlikely event that a discharge from the site was transferred to the Bay, the quantity is unlikely to be of such a scale that significant effects would arise. I am therefore satisfied that the potential for likely significant effects on qualifying interests within the Donegal Bay SPA and Donegal Bay (Murvagh) SAC can be excluded.

Screening Determination

- 7.7.27. 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 Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in combination, will have a significant effect on the following European sites.

- Lough Eske and Ardnamona Wood SAC (000163),

Stage 2 Appropriate Assessment

7.7.28. The NIS examines and assesses potential adverse effects of the proposed development on Donegal Bay SPA, Lough Eske and Ardnamona Wood SAC or Donegal Bay (Murvagh) SAC. Section 2.2 of the NIS, Methodology, outlines that the assessment is based desk-top assessment and a walk-over site survey, undertaken on 9th June 2021. The Section states that the following have been referenced in the preparation of the NIS: -

- *Marine Natura Impact Statements in Irish Special Areas of Conservation. A Working Document* (NPWS, 2012)
- *Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities* (NPWS 2009, revised 2010)
- *Assessment of Plans and Projects Significantly Affecting Natura 2000 Sites: Methodological Guidance on the Provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC* (EC, 2002)
- *Managing Natura 2000: The Provisions of Article 6 of the ‘Habitats Directive’ 92/43/EEC* (EC, 2000).

7.7.29. Regarding Lough Eske and Ardnamona Wood SAC, the NIS states that FPM and Salmon, qualifying interests within the SAC, may be impacted by pollution events emanating from the site.

7.7.30. I note that no specific impacts are identified in relation to Donegal Bay (Murvagh) SAC and Donegal Bay SPA. Regarding Donegal Bay (Murvagh) SAC the NIS states that indirect impacts via hydrological pathways should be carefully mitigated to avoid potential pollution via sediment/silt (during construction) entering the bay. Regarding Donegal Bay SPA the NIS states that the subject site is located far enough away from the SPA boundary and within an existing urban landscape to avoid any direct impact due to noise disturbance associated with construction activity and, in addition, the risk of surface water pollution affecting the habitats within the SPA is predicted to be non-significant due to recommended mitigation measures.

7.7.31. Following assessment, the NIS concluded that: -

‘The potential impacts of the proposed housing development at Drumrooske West, Donegal Town have been considered in the context of the European sites and their conservation objectives. Potential adverse impacts on Lough Eske and Ardnamona

Wood SAC (00163), Donegal Bay (Murvagh) SAC (0133) and Donegal Bay SPA (04151) were identified during the Screening process and, therefore, a Stage two Appropriate Assessment was carried out.

The conclusions are as follows: -

1. The project is not directly connected to the management of any European sites.
2. The project, alone or in combination with other plans and projects is not likely to have significant effects on any habitats or species for which Lough Eske and Ardnamona Wood SAC and Donegal Bay (Murvagh) SAC have been designated, contingent on the avoidance and mitigation measures described herein.
3. Negative impacts from the project are not foreseen on the population of birds for which the Donegal Bay SPA has been designated, contingent on the avoidance and mitigation measures described herein.

In the context of such an assessment it is the considered of the author of this NIS that with the mitigations measures set out in this report, there would be no significant adverse effects on the integrity of any European sites, as a result of this proposed development.'

Appropriate Assessment of Implications of Proposed Development

- 7.7.32. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European site using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

European Sites

- 7.7.33. The relevant European site for Stage 2 Appropriate Assessment is Lough Eske and Ardnamona Wood SAC (Site Code 000163). This Stage 2 assessment will consider whether or not the project would adversely affect the integrity of this European site, either individually or in combination with other plans and projects in view of the site's conservation objectives.
- 7.7.34. The main aspects of the development that could adversely affect the conservation objectives of European sites relate to: -

- Impacts on water quality arising from surface water discharges which contain suspended solids and/or pollutants, for both the construction and operational phases.

Evaluation of Effects

- 7.7.35. I have previously outlined that the local gradient is likely to result in surface water discharges from the site being directed towards the Drumrooske-Middle stream, which in turns connects to Lough Eske and Ardnamona Wood SAC. FPM and Salmon, qualifying interests within the SAC, are identified by the NIS as vulnerable to discharges which affect water quality. Both species require high water quality and the NIS identifies that in particular mussel habitat is severely impacted by nutrient-enrichment and sedimentation.
- 7.7.36. Regarding species characteristics, the NIS refers to Article 17 reporting undertaken by NPWS², which contains national level species conservation assessments for FPM and Salmon. For FPM, the report provides an overall assessment of conservation status of '*bad*' and with an overall trend of '*deteriorating*' (the NIS identifies this as declining). For Salmon the report provides an overall assessment of conservation status of '*inadequate*' and with an overall trend of '*stable*'.
- 7.7.37. Tables 3 and 4 of the NIS contains an assessment of the proposed development in relation to the attributes and targets associated with the conservation objectives vis-à-vis FPM and Salmon. The tables identify that attributes and targets will not be affected by the development, given pathways that would allow impacts to occur were considered in the design of the proposed development and a range of measures are in place to avoid water pollution. The proposed mitigation measures are set out at Section 4.5 of the NIS and they entail: -
1. Site preparation and construction should adhere to best practices and should conform to the Inland Fisheries Ireland Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites.
 2. All construction should commence with the installation of sediment screens and booms at appropriate locations so that any surface water run-off during

² The Status of EU Protected Habitats and Species in Ireland (Department of Heritage, Culture and the Gaeltacht)

construction will be directed appropriately to these screens to avoid direct runoff sediments.

3. The storm water design as proposed in the project must be implemented in full and maintained carefully.
4. At all times, all bulk fuel storage tanks should be properly bunded with a bund capacity of at least 110% of that of the fuel tanks.

7.7.38. As part of my assessment, I have given consideration to the Conservation Objectives document for the SAC³.

7.7.39. In relation to FPM, the Conservation Objectives document identifies that sedimentation of the Eske is an ongoing issue and in particular it states that '*Sufficient survival of juvenile mussels is being prevented by the poor condition of the river substratum.*' A target for the SAC, in respect of the substratum, is to '*Restore substratum quality-stable cobble and gravel substrate with very little fine material; no artificially elevated levels of fine sediment.*' In view of the vulnerability of mussel habitat to sedimentation, it is important that proposed mitigation should be adequate to ensure that water discharges from the site do not contain quantities of sediment/suspended solids that would affect water quality or the river substratum within the SAC.

7.7.40. Regarding Salmon, the Conservation Objectives document identifies a water quality target of Q4 (EPA Q Value), which equates to 'good' status. I note from available EPA records⁴ that the River Eske recorded Q4 performance in the area of the confluence with the Drumrooske-Middle stream, in 2018, and the river was assessed at that time as being in a satisfactory condition. EPA online mapping also identifies that the river is 'not at risk'.

7.7.41. Regarding the proposed mitigation for the construction phase, whilst I accept that appropriately specified and located sediment screens, which are recommended by Inland Fisheries Ireland guidance⁵ in relation to habitat protection during construction, are likely to ensure that no suspended solids or other pollutants will be discharged to the stream, no specification for the proposed sediment screens is provided and the locations for installation have not been identified. Section 7.4.6 of this IFI guidance

³ https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000163.pdf

⁴ <https://epawebapp.epa.ie/qvalue/webusers/PDFS/HA37.pdf?Submit=Get+Results>

⁵ Guidelines on Protection of Fisheries During Construction Works in and Adjacent to Waters (IFI, 2016)

advises that the level of suspended solids in any construction stage discharge shall not exceed 25mg/l, nor result in the deposition of silts on gravels or any element of the aquatic flora or fauna. In the absence of sufficient detail regarding the specification of the sediment screen system, together with demonstration that it will adequately contain suspended solids within the site, I am unable to ascertain whether the development would adversely affect water quality within the SAC and/or the integrity of the site, in view of its Conservation Objectives.

- 7.7.42. I would question the proposed incorporation of booms during construction, which appear to me to require third party consent for installation, given they would be placed in the stream. In any case, given the importance of avoiding sediment being discharged to the stream, I consider mitigation should be adequate to ensure that any discharges containing suspended solids are intercepted before entering the stream.
- 7.7.43. Regarding the proposed mitigation for the operational phase, whilst I am aware that the surface water drainage system was assessed and considered acceptable by the Planning Authority's Roads Department as part of the assessment of the previously refused development, details of the design characteristics of the proposed system and its adequacy to serve the proposed development have not been provided as part of this application.
- 7.7.44. In the absence of such details and assessment of adequacy of same within the NIS, I am unable to determine, in particular, the level of treatment/interception of suspended solids or pollutants, etc, that would take place prior to attenuated discharge to the stream and the impact, if any, on water quality within the SAC. In view of the particular vulnerability of FPM and Salmon to surface water discharges containing suspended solids, I am unable to ascertain whether the development would adversely affect water quality within the European site and/or the integrity of the site, in view of its Conservation Objectives.
- 7.7.45. The Board may wish to utilise its powers under Section 132 of the Act, to request the applicant to submit such additional reporting that describes the proposed sediment screen system and surface water drainage system in detail, their adequacy for the proposed development and the subject site and which demonstrate that surface water discharges from the site would not contain suspended solids or pollutants in quantities

that would be sufficient to adversely affect water quality within the European site and/or the integrity of the site, in view of its Conservation Objectives.

Appropriate Assessment Conclusion

7.7.46. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended.

7.7.47. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the Lough Eske and Ardnamona Wood SAC (Site Code 000163). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of this site, in light of its conservation objectives.

7.7.48. Following an Appropriate Assessment, it has not been ascertained beyond a reasonable doubt that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European site No 000163, in view of the site's Conservation Objectives. This conclusion is based on:

- A lack of information on the possible effects of surface water discharges during construction on the European site. In particular the proposed mitigation does not adequately specify the proposed sediment screen system, together with demonstration that it will adequately contain suspended solids within the site, to avoid potential impacts on water quality within the European site and/or the integrity of the site, in view of its Conservation Objectives.
- A lack of information on the possible effects of surface water drainage measures on the European site. The proposed surface water drainage system includes the provision of an attenuation tank and attenuated discharge of surface water to the Drumrooske-Middle Stream, but design characteristics and calculations which justify its suitability, including details regarding treatment/interception of suspended solids or pollutants have not been provided.

8.0 Recommendation

8.1. I recommend that planning permission is refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

9.1. The proposed development is in close proximity to the Drumrooske-Middle stream and it has been identified by the Natura Impact Statement provided as part of the application that the proposed development, at both construction and operational stages, has the potential to impact on water quality and/or site integrity of the Lough Eske and Ardnamona Wood Special Area of Conservation (Site Code 000163). Insufficient information has been provided regarding proposed mitigation within the Natura Impact Statement, including demonstration that proposed mitigation for the construction and operational phases will adequately treat/intercept suspended solids and pollutants and that surface water discharges from the site will not affect water quality and/or site integrity of the European site. Therefore, on the basis of the information provided with the application and appeal, and in light of the Stage 2 Appropriate Assessment undertaken, the Board cannot be satisfied that the development, individually, or in combination with other plans or projects, would not be likely to have a significant effect on Lough Eske and Ardnamona Wood SAC, in view of the site's conservation objectives. In such circumstances, the Board is precluded from granting permission.

Barry O'Donnell
Planning Inspector
22nd February 2022.

Appendix 1

Other identified European sites within 10km

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor)
<u>SPA</u>			
Durnesh Lough SPA (Site Code 004145)	<ul style="list-style-type: none"> • Whooper Swan, • Greenland White-fronted Goose 	10km south-west	No
<u>SAC</u>			
Meenaguse/Ardbane Bog SAC (Site Code 000172)	<ul style="list-style-type: none"> • Blanket bogs 	6km north	No
Dunragh Loughs / Pettigo Plateau SAC (Site Code 000775)	<ul style="list-style-type: none"> • Northern Atlantic wet heaths with Erica tetralix • Blanket bogs 	8.1km south-west	No
Durnesh Lough SAC (Site Code 000138)	<ul style="list-style-type: none"> • Coastal lagoons • Molinia meadows on calcareous, peaty or clayey-silt-laden soils 	9.1km south-west	No
River Finn SAC (Site Code 002301)	<ul style="list-style-type: none"> • Oligotrophic waters containing very few minerals of sandy plains • Northern Atlantic wet heaths with Erica tetralix • Blanket bogs • Transition mires and quaking bogs • Salmon • Otter 	9.5km north-west	No