



An
Bord
Pleanála

Inspector's Report ABP-311567-21

Development	Erection of a building for use as stables and a barn for dry storage
Location	Ballymagaraghy, Falmore, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2151461
Applicant(s)	Paul Harkin.
Type of Application	Retention and permission.
Planning Authority Decision	To grant.
Type of Appeal	Third Party
Appellant(s)	Mary McIntyre.
Observer(s)	None.
Date of Site Inspection	17 th August 2022.
Inspector	Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The 0.34ha appeal site is situated on the Inishowen Peninsula in County Donegal. It lies c.5km to the south east of Culdaff town in the townland of Ballymagaraghy. It is situated on the northern side of the public road, which forms part of the 'Inishowen 100' scenic route. The site overlooks White Strand beach. Immediately west of the site is a two storey residential property. Beyond this property is a small cluster of dwellings on each side of the public road.
- 1.2. The appeal site comprises an agricultural field bound by a post and wire fence to the public road, stone wall to the west and east (broken to the east). To the north the land falls towards the sea. On the eastern side of the site is a pump house with electricity and water supply. To the west are two containers, one closed and the other providing housing for sheep.
- 1.3. The eastern boundary of the site directly adjoins the North Inishowen Coast proposed Natural Heritage Area and Special Area of Conservation (joint site code 002012).

2.0 Proposed Development

- 2.1. The proposed development comprises retention permission for site works and planning permission to build two single storey structures comprising (a) a building for use as a stables (two no. stables, floor area c.48sqm, ridge height c.4.2m), and (b) a barn for dry storage (structure divided to provide a dry store and tack room, floor area c.66sqm, ridge height c.3.76sqm).
- 2.2. The development will be serviced by an existing connection to a group water scheme. No foul water will be generated by the development. Surface water will be disposed of into watercourses along the sites boundaries (see Site Layout Plan).
- 2.3. The planning application includes a screening report for appropriate assessment. It considers that due to the location of the development outside and downstream of North Inishowen Coast Special Area of Conservation, the nature of development and control of runoff during construction the development will have no adverse effect on the SAC.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 9th of September 2021 the planning authority granted permission for the development subject to 9 no. conditions. These included provision of 70m visibility splays in each direction (C2), construction of dry stone wall along setback boundary (C3), removal of lorry boxes from the site (C4), positioning of the barn on the site and precluding other uses - equestrian purposes only (C5), location of dungstead to be 30m from nearest residential property (C7) and provision of planting along the first 25m of the western site boundary (C9).

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 7th September 2021 – Refers to the location and nature of the development, internal reports, submission made, planning history and policy context. It addresses the issues raised in observations and considers the merits of the development including principle, siting and design, access, public health and appropriate assessment. It considers that the development is acceptable in principle (keeping of horses), with the key issue to be considered, impact on local residential amenity. It is stated that the development would not intrude significantly or materially alter the view between the public road and the coast or create a traffic hazard. It recommends that the proposed barn building be relocated so that it is 4m from the party side boundary and the dungstead situated on eastern side of site (removed from residential property and down gradient of SAC). No issues in respect of appropriate assessment arise due to the location of the development relative to the SAC, minor nature of the development and expanse of SAC. The report recommends granting permission subject to conditions.

3.2.2. Other Technical Reports

- Roads (29th July 2021) – No objections.
- Roads and Transportation (18th August 2021) – No objections.

3.3. Prescribed Bodies

- None.

3.4. Third Party Observations

3.4.1. On file are two third party observations (one from the appellant). Issues raised are:

- Ulterior motive for development (applicant intends to build house on site, no rural housing need or links to area).
- Visual impact on sensitive landscape (natural topography altered, loss of traditional field boundary, temporary structures, pump house and services, ribbon development).
- Traffic hazard (dangerous movements with larger vehicles, location of Inishowen 100 and close to Wild Atlantic Way).
- Water supply issues (no water supply on site or group water scheme, water will be pumped from holding tank that supplies 3 no. holiday homes and farmhouse, impact of pump on supplies to houses).
- Impact of animal effluent on observers well.
- Development would impact on conservation objectives and qualifying interests of North Inishowen Coast SAC.
- Site size could not sustain animals, need for odder. Gate on plans shows access to lands not owned by applicant.
- Inappropriate precedent that the development would set.
- Arguments PA raised in connection to extension of nearby wind farm apply (not detailed).

4.0 Planning History

- PA ref. S5 21/06. Section 5 referral. Horse stables said not to be exempt development on the basis that no consent from owners of residential properties within 100m of stables submitted.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

- 5.1.1. Site is situated in an area of High Scenic Amenity. These are described in the Plan as having '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 objectives NH-O-4 and -O5 afford protection to landscape character. The coast, north of the appeal site, is designated as an Area of Especially High Scenic Amenity. The area described as 'sublime natural landscapes of the highest quality that are synonymous with the identity of County Donegal. These areas have extremely limited capacity to assimilate additional development'.
- 5.1.2. The appeal site adjoins the boundary of the North Inishowen Coast SAC and proposed Natural Heritage Area (common site code 00212). Policy objectives NH-O-2 and -O-3 afford protection to European and national sites in accordance with EU and national legislation.

5.2. Screening

- 5.2.1. Notwithstanding the proximity of the proposed development to a European site, the nature and scale of the development would not result in a 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. Issues in respect of European sites can be dealt with under appropriate assessment.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appeal is made by the occupant of the property to the west of the appeal site. Matters raised are:

- Sensitive coastal landscape, High Scenic Amenity area adjoining Especially High Scenic Amenity Area and tourist route (Inishowen 100) and close to Wild Atlantic Way and Tremore beach (tourist attraction below site). Site adjoins an SAC. Further scenic views at Glenagivney. Impact on HSA area and views from sea views from public road. Loss of native shrubs, hedgerows, natural boundaries and stone walls. Detrimental impact on character of area. Conflict with policies of County Development Plan (NH-O-4-05, NH-P-7 to 9 and NH-P-13). Development would set undesirable precedent for future development.
- Unsightly containers, pumphouse and electricity pole. Services should be underground.
- No reference to removal of stone wall ditch and recontouring of site in application, no topographical survey. Native hedgerows/stonewall replaced with non-indigenous species.
- Proxy for securing permission for a house. Applicant would not qualify for rural housing need.
- Precedent for refusals for houses and agricultural development in the area (see attachment no. 2 of appeal).
- Impact on SAC/pNHA. Site is upstream of SAC and hydrologically connected to it. No ecological assessment or appropriate assessment.
- Impact on well water. Not shown on plans.
- Traffic hazard (new entrance, location on Inishowen 100 and near Wild Atlantic Way). No traffic survey. Inadequate sight lines (large vehicles, and traffic on scenic route). 70m sightlines cannot be achieved to west. Permission not given for these over appellant's land.
- Inaccurate plans (do not show extent of unauthorised development, location of appellant's well, setback from well). Application should have been invalidated and rejected.
- Water supply is from a private well, made through another person's land without consent. Site connects to holding tank for 3 holiday homes and

farmhouse. Use of pump will deplete supply for others. Applicant has no legal right to water.

- Development is not a bona fide agricultural operation. Applicant from Derry does not work in agriculture. He has not been observed tending animals on the site. No close familial connection to area. Field (0.134ha/0.78acres) will not support much grazing for horses or other animals (1.5acres per horse and 1 acre for each horse after, Teagasc Horse Ownership Guide, 2018). Stables are excessive in size.
- Right of way to shore through appeal site, not shown on plans.
- No exempted development rights (buildings within 100m of dwelling, no AA, development would interfere with right of way, new entrance, adverse impact on NHA, comprises works to unauthorised structure).
- Precedent set by PA ref. 20/51034.
- Omission and inaccuracies in the planning application - Incomplete sight lines, details of earthworks and topographical survey, site notice not shown on Location Map, wrong reference to group water scheme, no location of private well, inaccurate location of applicant's roadside building, no right of way shown through site, no details of boundaries, no FFL relative to adjoining, no sections, low stone wall inadequate to keep horses, adjoining SAC, EHSA and touring route not shown, no response from NPWS or health officer. Should be invalidated.
- Appellant requests Board to refuse permission or grant subject to conditions limiting permission to a temporary use and addressing matters raised in appeal (see page 10 of appeal).

6.2. Applicant Response

- Applicant's response to the appeal was made outside of the appropriate period.

6.3. Planning Authority Response

6.3.1. The PA make the following comments on the appeal:

- Roads Executive Engineer did not object to application.
- Applicant's well is addressed by condition nos. 5 and 7.
- The part of the SAC that adjoins the site is uphill of it.
- Condition no. 4 require removal of lorry boxes/containers.
- Pumphouse is a minor development and exempt under Class 44 (Part 1, schedule 2 P&D Regulations 2001, as amended).
- Easements for water supplies do not need to be registered and issues of right to maintain water supply through third party lands are civil law issues.
- Recontouring of land for improvement of agriculture is exempt under article 8C of the P&D Regulations 2001, as amended.
- The precedents referred to by the appellant area at different locations and were considered on their own merits.
- Right of way registered on Land Direct is through the adjoining site.

6.4. Observations/Further Responses

- None.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local and national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle.
- Visual impact.
- Traffic hazard.
- Public health.
- Impact on European sites (dealt with under Appropriate Assessment).

7.2. I also comment on the following matters that have been raised:

- **Precedents.** The appellant refers to a number of planning applications refused for dwelling houses in the vicinity of the site and for agricultural development (1999 to 2007) and to a more recent decision under PA ref. 20/51034 for the retention of a mobile unit for agricultural use (tack room, changing room, wet room, office and rest area, access laneway) and permission for construction of agricultural building comprising barn and stables. This latter development is situated c.450m to the north west of the appeal site on lands on the southern side of the public road. Permission was refused for a number of issues including sightlines, traffic hazard, lack of water supply, prominence and lack of integration and visual impact. The development is. All of the developments referred to have been decided upon on the basis of their site specific context and prevailing planning policies. The proposed development also raises site specific issues, and should be determined on its merits in the context of current planning policies.
- **Inaccuracies, validation.** The PA is responsible for the validation of planning applications. Any relevant discrepancies referred to are addressed in this report.
- **Right of way across site and right to lay water pipe through 3rd party lands.** These are legal matters, outside the scope of this appeal and can be addressed through the courts.
- **Exempted development.** The proposed development does not comprise exempted development. This is acknowledged by the PA in their Section 5 determination and by the applicant, by way of the planning application made. Exempted development regulations therefore do not apply. This includes the subject pumphouse and levelling of grounds, all of which have been carried out to support the subject development.
- **Proxy for securing permission for a house.** The proposed development is not a dwelling house, and this assessment is based on the proposed development. Any planning application for a dwelling would be determined under relevant policies of the County Development Plan at the time, including applicant's ability to comply with rural housing policies.

- Water supply. The applicant has indicated water supply to the site from a group water scheme. The name of the scheme is not indicated nor consent from the group water scheme. If the Board are minded to grant permission for the development, this matter could be addressed by condition.

7.3. Principle.

- 7.3.1. The County Development Plan acknowledges that traditional activities, including farming, have and will continue to have an important role in the rural economy. Horse riding is referred to in the Plan as an emerging diversification opportunity alongside angling, sailing, surfing, walking etc. Policies of the Plan support economic development and economic development proposals that meet locational policies and are consistent with the proper planning and sustainable development of the area.
- 7.3.2. Whilst the keeping of horses is acceptable in rural areas, the applicant does not provide details on the rationale for the proposed development. For instance, there is no information on his location relative to the site (for the purpose of oversight of stabled horses) or the purpose for which horses will be kept e.g. whether the application is for an agricultural or economic use (breeding), or a domestic use (a hobby). There is also no indication on the likely scale of activity. For example, the tack room is substantial in size for the keeping of a small number of horses and the stables exceed both the Teagasc and British Horse Society guidelines for the size of a stable to accommodate the largest horse. (Stables are 6.15m x 3.6m = 22.14sqm. Teagasc recommend 8sqm for ponies and 11-20sqm for larger horses; BHS recommend 9.3sqm for ponies and 15.5sqm for larger horses). It is also not clear if horses will be allowed to graze/roam in the appeal site or the type of fencing/boundary treatment that will be required to contain animals within the site. (I note that the applicant's landholding extends to a larger area than the application site).
- 7.3.3. There is a lack of clarity therefore with regard to nature of the development, with potential consequences for traffic likely to be generated and to a lesser extent visual effects (requirement for and nature of fencing).

7.4. Visual impact.

- 7.4.1. The appeal site lies in a sensitive coastal landscape. It is situated in an Area of High Scenic Amenity, landscapes which are described as of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality, with a capacity to '*absorb sensitively located development of a scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape*'. The coast is designated as an area of Especially High Scenic Amenity (EHSA).
- 7.4.2. The appeal site lies between the public road and the sea. The traditional roadside boundary has been removed and site has been levelled towards the public road, falling sharply to the north. There are no details on file regarding original site levels, boundary or therefore clarity regarding extent of earth works which have been carried out.
- 7.4.3. With the removal of the roadside boundary there are clear views across the site towards the sea and the EHSA area. The containers on the site are unsightly and detract from views from the road, part of the designated Inishowen 100 touring route. The existing pumphouse (to be retained), is situated to the east of the site and it and the associated services are not overly visible from the public road, and from the west are seen against a rising topography.
- 7.4.4. The proposed stables and barn building are situated to run parallel to site boundaries (90°) to the public road. FFL for the proposed structures are indicated on plans, with the barn at a higher elevation than the stables. However, levels across the site, which vary by virtue of proposed FFLs are unclear and there is no context for the development, relative to the adjoining property. Notwithstanding this, the proposed stables will screen the pump house to the east of the site and will be set within the rising topography to the east of the site. Further, the proposed barn will be situated alongside the two storey property to the west and will read as a modest extension to the existing cluster of properties.
- 7.4.5. The plans for the development indicate a new roadside boundary (materials not defined) with back planting with a hedgerow. However, in their decision to grant permission the PA require a dry stone wall between 400mm and 600mm along the roadside boundary. This approach seems reasonable as it would allow views across

the site to the sea to be retained and provide a traditional roadside boundary which is characteristic of the area. If the Board are minded to grant permission, detailed design should be controlled by condition.

- 7.4.6. Condition no. 5(a) of the permission requires that the barn building be positioned 4m from the western boundary. Whilst this will reduce the impact of the building on the amenity of the property to the west, it will position the building more centrally to the site, increasing visual impact on views from the public road. I would recommend instead, if the Board are minded to grant permission, that it be relocated 4m to the north of its current location, in the interest of residential amenity, and reduced in scale in order for it to be accommodated on the raised area of the site. In the interest of visual amenity I would also recommend that (a) prior to commencement of development a detailed topographical survey be submitted for agreement with FFL of proposed structures to minimise elevation on site and elevation relative to the adjoining dwelling and (b) all services within the site are placed underground.
- 7.4.7. Having regard to the foregoing, removal of the existing temporary structures, the orientation and location of the proposed structures on the site and proposed boundary treatment, I am satisfied that the proposed development can be assimilated into the receiving landscape and that it will retain its rural, agricultural character.

7.5. Traffic hazard

- 7.5.1. The appeal site lies on a minor, narrow county road that is designated as part of the Inishowen 100 tourist route, a coastal scenic drive used for walking, cycling and driving. At the time of site inspection, there was little traffic on the road, but there was evidence of tourist traffic and touring vehicles (cyclists, camper vans). Condition no. 2 of the permission requires that 70m sightlines in each direction as per the requirements of the Roads and Transportation Planning Report (18th August 2021) can be achieved.
- 7.5.2. The Site Layout Plan for the development does not indicate the sightlines that can be achieved at the entrance. Further, it does not accurately indicate the structures associated with the dwelling to the west of the site. These include a low stone wall and high plastered wall along the site frontage (see photographs). It is not clear from

the plans submitted how the required sightlines will be achieved. Given the existing use of the site for agricultural purposes, and the proposed use, there may be scope for reduced sightlines. However, in the absence of clarity on the exact nature of the development, the related traffic movements likely to arise and details on achievable sightlines, there is a risk that the development will give rise to traffic hazard.

7.6. Public health

- 7.6.1. The appellant identifies the location of the well serving the appellant's property on attachment no. 1 to the appeal. It lies to the south east of the appellants property, to the south west of the proposed barn building.
- 7.6.2. The appeal site is traditionally in agricultural use, and currently grazed by sheep. It is not clear if horses to be kept on site will be able to graze in the location of the structures. However, any manure arising from grazing, as per current grazing by sheep, is unlikely to adversely impact on well water (with likely retention and breakdown in intervening soils).
- 7.6.3. With stabling, there is potential for larger quantities of manure to arise on site. Condition no. 7 of the permission requires the location of any dungstead to be at least 30m from the nearest house and in accordance with the separation distances stipulated in 2021 EPA Code of Practice 'Wastewater Treatment and Disposal Systems Serving Single Houses', as if such a dungstead was a polishing filter. Table 6.2 of these guidelines require a separation of 15m of an up gradient domestic well, 25m of an alongside domestic well and 30-60m of a down gradient well dependent on soil characteristics.
- 7.6.4. The appeal site largely slopes towards the sea (albeit levelled at its roadside location). Groundwater flow paths are likely to follow topography. Given the orientation of the appeal site relative to the appellant's well, any dungstead on the appeal site would be located alongside or down gradient of it. If the separation distances set out in Table 6.2 of the EPAs guidelines are adhered to, I am satisfied in principle that no adverse effects on the adjoining domestic well are likely to arise.

8.0 **Appropriate Assessment**

8.1. **Appropriate Assessment- Screening**

Compliance with Article 6(3) of the Habitats Directive

- 8.1.1. 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

- 8.2. The applicant has submitted a screening report for Appropriate Assessment as part of the planning application 'Screening Report – under Article 6(3) and 6(4) Habitats Directive'. The report identifies potential effects that the development would have on the conservation interests of the North Inishowen Coast Special Area of Conservation (site code 002012) with damage to breeding habitat for Corncrake, damage and destruction of coastal and marine habitats and disturbance to wintering wildfowl. The report refers to the site synopsis for the SAC and considers that the subject site already enjoys the benefits of agricultural use, site works have already been carried out, the application does not impede the SAC (development is downhill from the SAC), buildings are for an animal shelter and storage of feed, concern of runoff during construction would be addressed by placing concrete bases on site with timber frame (pre-fabricated) structure over and silt traps to be provided via shallow open drains downhill from proposed works during construction, thus negating any run-off further afield. The report concludes that due to the nature of the proposal, location of site outside of SAC and mitigation measures (shallow drainage and silt pits during construction), an NIS would not be required, and the development would have no adverse effect on the SAC.
- 8.3. Having reviewed the documents I am not satisfied, for the reasons stated below, that the information allows 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.

Screening for Appropriate Assessment – Test of Likely Significant Effects

- 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).

Brief description of the development

- 8.5. The appeal site is situated immediately west of, and shares a boundary with, the North Inishowen Coast SAC. The proposed development comprises the retention of site works including removal of front boundary wall, installation of water pipe, electricity and pumphouse and construction of stables and barn.

Submissions and Observations

- 8.6. Appellants and observers raise concerns regarding the impact of the development on the SAC on the grounds that the appeal site is upstream of the SAC, hydrologically connected to it and no ecological assessment or appropriate assessment provided.

European sites

- 8.7. The development adjoins the North Inishowen Special Area of Conservation. Qualifying interests of the site are:

- Mudflats and sandflats not covered by seawater at low tide [1140]
- Perennial vegetation of stony banks [1220]
- Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- Machairs (* in Ireland) [21A0]
- European dry heaths [4030]
- *Vertigo angustior* (Narrow-mouthed Whorl Snail) [1014]
- *Lutra lutra* (Otter) [1355]

- 8.8. Conservation objectives are to maintain or restore the favourable conservation condition of qualifying interests, defined by specified attributes and targets. (NB Corncrake are not identified as a QI as referred to the in applicant's screening report).

Identification of Likely Effects

- 8.9. The proposed development involves construction works and use of the site for horses thereafter. It is possible that surface water runoff from the site during

construction becomes contaminated for example, with sediments, concrete or hydrocarbons. During operation, again surface water may become contaminated from any concentration of effluent (e.g. from cleaning of stables or from dungstead). As the site adjoins the SAC there is potential for disturbance of species during construction and operation. No other projects are proposed in the immediate area of the site.

- 8.10. The proposed development is modest in scale. It lies downhill of the adjoining SAC to the east, but uphill of the European site as it extends across the coast to the north of the appeal site. Storm water drains proposed along site boundaries are likely to discharge to the sea, c.150m to the north. These were not evident on inspection of the site i.e. there appeared to be no existing channel/stream along site boundaries. Notwithstanding this, over this distance, given the size of construction works and scale of development, any contaminated surface water arising (construction or operation) is likely to be significantly diluted and/or to have percolated to soils with attenuation and breakdown effects such that no significant effect on water quality in the European site or on coastal community types or species (otter) are likely to arise (see Conservation Objective Maps for location of QIs relative to appeal site).
- 8.11. With regard to disturbance, whilst the lands adjoining the appeal site are designated as forming part of the SAC, no QIs are identified on these lands including use by mobile species (otter and tiny whorl snail).

Mitigation Measures

- 8.12. The applicant has referred to mitigations measures in his Appropriate Assessment Screening Report. This is inappropriate and contrary to guidelines on AA.
- 8.13. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

Screening Determination

- 8.14. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site No. 002012 (North Inishowen

Coast SAC), or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required. This determination is based on the nature, scale and form of the development and its location relative to the European site.

9.0 Recommendation

- 9.1. In the absence of further information, recommend that permission for the development be refused.

10.0 Reasons and Considerations

1. The site is located on a minor road which is seriously substandard in terms of width and alignment, and which is a designated tourist route. The proposed development, which is inadequately defined in terms of its use, would generate additional and unquantified traffic turning movements on this minor road at a point where sightlines are restricted to the west and where the applicant has not demonstrated what sightlines can be achieved. The proposed development would therefore endanger public safety by reason of traffic hazard.

Deirdre MacGabhann
Planning Inspector

29th August 2022