



An  
Bord  
Pleanála

## Inspector's Report 311636-21.

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<b>Development</b>	Dwelling House, Effluent treatment system and percolation area and associated site works.
<b>Location</b>	Mountain Park, Carlingford, County Louth.
<b>Planning Authority</b>	Louth County Council.
<b>Planning Authority Reg. Ref.</b>	21/974.
<b>Applicant</b>	Niall Donnelly
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Niall Donnelly.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	19 <sup>th</sup> January 2022.
<b>Inspector</b>	Lucy Roche.

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## **1.0 Site Location and Description**

- 1.1. The appeal site has a stated area of 0.243ha and is located in the rural area of Mountain Park, c375m west of the settlement boundary of the Carlingford. The surrounding area comprises a mix of low-density- one-off rural housing, agricultural fields and mountainous uplands which are accessed via a network of narrow tertiary local roads and unmade agricultural access lanes /walking trails. The site is situated on the south-eastern slope of Slieve Foye, it is elevated and benefits from views to the west over Carlingford and Carlingford Lough.
- 1.2. The site comprises a small agricultural grazing field located on the northern side of a narrow, unsurfaced access track which is served by the L-70592 Local Tertiary Road. Ground levels within the site slope, generally, from west to east.
- 1.3. The southern site boundary is defined by a lichen covered stone wall, the track side of which is heavily overgrown with grasses, bramble etc. The northern, eastern and western boundaries are defined by native hedgerow. The site is bisected by a timber post and wire fence from north to site.
- 1.4. There are several detached houses to the South and Southeast of the site.

## **2.0 Proposed Development**

- 2.1. Permission is sought to construct a part-single, part two storey detached dwelling with a stated GFA of 219. 8sq.m

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to refuse planning permission based on 5 reasons:

1. The proposed development by reason of its elevated location, distance from the public road and new works to this right of way would constitute

inappropriate backland development which would result in intrusive encroachment of physical development into this scenic rural landscape around Carlingford. The proposed development in conjunction with the existing proliferation of one-off houses in the immediate vicinity of this site would mitigate against the preservation of the rural environment and would set and undesirable precedent for other such development in the vicinity. Such development would be contrary to the objective and policy SS26 requirements of the Louth Development Plan 2015-2021 which seeks to protect the scenic quality of the landscape and requires that the siting of a proposed dwelling is such that it does not detract from the rural character of the landscape or the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The applicant has failed to demonstrate that they meet with the qualifying criteria under Criteria 2 of the Louth County Development Plan by reason of failing to adequately demonstrate, by way of documentary evidence, that they have not owned a house in the rural area of County Louth for a minimum of 5 years prior to making this application. Accordingly, the proposed development is contrary to Policy SS19 of the Louth County Development Plan 2015-2021 and would therefore be contrary to the proper planning and sustainable development of the area
3. The proposed development would be located along an un-surfaced access track outside of the ownership of the applicant which is considered inadequate in width, alignment, gradient, and structural conditions and would endanger public safety by reason of traffic hazard
4. The proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a substandard tertiary road at a point where sightlines are restricted in both directions. Accordingly, to grant permission would be contrary to the proper planning and sustainable development of the area.
5. It is the policy (HER 3 and HER 5) of the Louth County Development Plan 2015-2021 to ensure that all proposed developments comply with the DECLG

“Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities 2010” and that any plans or projects that would have a significant adverse impact (either individually or in combination with other plans and projects) upon the conservation objectives of any Natura 2000 site will not be permitted. The applicant has failed to submit adequate soil permeability testing to determine the infiltration characteristics of the site and thus the surface water design report is inadequate nor has the application wastewater treatment system been demonstrated to be in compliance with the EPA Code of Practice 2021 and accordingly the Planning Authority are not in a position to state that the proposed development will not have a negative impact on the Natura 2000 sites in the area and as such, the proposal contravenes the policy of the Louth County Development Plan 2015-2021 and thus would be contrary to the proper planning and sustainable development of the area.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The Planner in their report had regard to the locational context of the site; relevant planning history and policy and to the inter-departmental reports received. Their assessment included the following:

- The proposal was screened for appropriate assessment. The screening assessment concluded that due to inadequate surface water design proposals and the wastewater treatment system not being designed in compliance with EPA Code of Practice 2021 is not possible to conclude that the proposed development would not have adverse impacts on the conservation objectives of designated sites
- They considered that the applicant had failed to demonstrate that he qualifies with the local needs qualifying criteria as per Section 2.19.1 of the County Development Plan 2015-2021, in particular that he had not owned a dwelling in the rural area of the County for a minimum of 5 years prior to making an application.

- They noted that the application was materially different to the previous application, ABP300211 (PA REF:16/778) on grounds of design and that permission was sought on Criteria 1 Zone 2
- They considered the house design appropriate for its rural context but raised concerns regarding the ad hoc nature of its location – on elevated lands, in a backland location some distance to the narrow tertiary road.
- They note the proposed access arrangements which cross over third-party lands and for which consents were not submitted; the additional works that would be required to facilitate access to the site and the undesirable precedent that these works would set for further development at this rural location.
- They raise concerns regarding the sub-urbanisation of this rural area particularly having regard to its elevated location
- They note the refusal reasons of the previous application, ABP-300211-17 PL16/778 – relating to traffic hazard and consider that while alternative access arrangements have been proposed, that the reasons for refusal have not been adequately addressed
- They note that the site is not vulnerable to flood risk.
- They recommended that planning permission be refused for 5no reasons.

### 3.2.2. Other Technical Reports

#### Infrastructure report Request for further information

- The submission of the Speed survey referenced in the application along with proposals for the provision of adequate sightline distances
- The submission of written proof that all necessary rights and/or permissions from third party landowner(s) has been obtained for provision of access to accommodate the proposed development along with the submission of a formal legal agreement.
- Revised surface water design report to include soil permeability testing

## Environment report

## Request for further information

- Confirmation of the name of the person who will supervise the installation of the effluent treatment system and percolation area
- The submission of a site characterisation form in accordance with EPA Code of Practice 2021 along with a map showing the location and separation distances of drains, wells and percolation area and ground water flow direction

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

None

## 4.0 Planning History

PA. Ref: 20/671      October 2020 – Permission refused for new dwelling house effluent treatment plant and percolation area for 4 reasons as follows: failure to demonstrate a rural housing need; traffic safety and appropriate assessment.

ABP-300211-17      (PA REF: 16/778) Feb 2018 – Permission refused for Dwelling house, WWTP and site works, for the following Reasons:

1. The proposed development would be located along an unsurfaced access track which is inadequate in width, alignment, gradient and structural conditions and would, therefore, endanger public safety by reason of traffic hazard. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning

movements the development would generate on a substandard Local Tertiary Road at a point where sightlines are restricted in both directions. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

## **5.0 Policy Context**

### **5.1. National Planning Framework**

The NPF in relation to rural housing includes objective 19-

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

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

### **5.2. Sustainable Rural Housing Guidelines 2005**

The Sustainable Rural Housing Guidelines require planning authorities to differentiate between rural housing demand arising from rural housing need and housing demand arising from proximity to cities and towns. Additionally, development plans should distinguish rural areas under strong urban influence,



stronger rural areas, structurally weak rural areas and areas with clustered settlement patterns. Development management policy should be tailored to manage housing demand appropriately within these areas.

### 5.3. Development Plan

5.3.1. The application was assessed by Louth County Council in accordance with the policies and objectives of the Louth County Development Plan 2015-2021. The Louth County Development Plan 2021-2027 was adopted by Louth County Council on the 30th of September 2021 and came into effect on the 11th of November 2021. I have assessed the proposal under the provisions of the operative Development Plan, namely the Louth County Development Plan 2021-2027.

#### 5.3.2. Louth County Development Plan 2021-2027.

5.3.3. The subject site is not zoned in the Louth County Development Plan 2021-2027 and is in the rural area. Section 3.17.3 of the County Development Plan classifies all rural areas within the county as being rural areas under strong urban influence however it also notes that there are parts of the County that are more environmentally sensitive due to their high scenic quality and cultural value and as a result categorises two Rural Policy Zones. Rural Policy Zone 1 encompassing areas identified as being under strong urban influence and of significant landscape value and Rural Policy Zone 2 encompassing areas identified as being under strong urban influence

5.3.4. The Appeal site is located within Rural Policy Zone 1 – Area under strong urban influence and of significant landscape value as indicated on Map 3.2 of the Development Plan. Table 3.5 of The Development Plan sets out the Local Need Qualifying Criteria in Rural Policy Zone 1 as follows:

1. Persons engaged in full time agriculture. This includes livestock, poultry, dairy, and tillage farming, bloodstock and equine related activities, forestry, and horticulture. The nature of the agriculture activity shall, by reference to the landholding, livestock numbers, or intensity of the use of the land, be sufficient

to support full time or significant part time occupation. Depending on the activity the documentation available will vary however the onus will be on the applicant to demonstrate the viability of the enterprise. Information to be provided shall include:

- The size of the landholding;
- The nature of the operations;
- Buildings and storage associated with the operations;
- Number of persons employed;
- Livestock numbers (if applicable);
- Participation in government schemes/ programmes e.g. Bord Bia Quality Assurance, Basic Payment Scheme (BPS), GLAS, or any similar/updated programmes or schemes;
- Any other information that would support the application.

Or

2. A son or daughter of a landowner (see definition above) who is/are seeking to build a first home for permanent occupation. A qualifying landowner is defined as a person who owns a landholding of at least 1.5 hectares and has owned the land for a minimum of 15 years. Any applicant under this category must demonstrate a rural housing need and have a demonstrable social or an economic need to live in the area and shall not have previously owned a dwelling. No more than three houses (exclusive of the family home) shall be permitted on the landholding. Any application will be subject to the appropriate siting and consideration of proper planning and sustainable development.

Or

3. A person who has an established business which is intrinsically reliant on being located in Rural Policy Zone 1 and consequently requires them to reside in Rural Policy Zone 1 of the rural area. The nature of the operations of the business shall be specific to this rural area being cognisant of the need to protect the high amenity value of the landscape. Any application shall

demonstrate the viability of the business and clearly set out the nature of activities associated with the business and why it requires the owner to reside in the vicinity.

Or

4. Persons who are required to live in the rural area of Rural Policy Zone 1, for exceptional health reasons. The person will be required to have demonstrable economic or social ties to the area in the first instance to be considered under this category. Any application shall be accompanied by a medical consultant's report and recommendation outlining the reasons why it is necessary for the applicant to live in a rural area. The application shall also demonstrate why the existing home of the family member cannot be adapted to meet the needs of the applicant.

Or

5. Residents who have demonstrable social ties to the area and are providing care for an elderly person(s) or a person(s) with a disability who lives in an isolated rural area and who does not have any able-bodied person residing with them. Any application shall demonstrate why the existing property cannot be extended or modified to provide residential accommodation for the carer. One house only will be allowed on this basis and the site must be adjacent to the dwelling in which the elderly person(s) or person(s) with the disability resides.

Or

6. A person who has been a resident for at least 10 years that previously owned a home and is no longer in possession of that home due to the home having been disposed of following legal separation / divorce / repossession and can demonstrate a social or economic need for a new home in the rural area.

5.3.5. Relevant Policy Objectives:

HOU 36 To discourage urban generated housing in rural areas and direct proposals for such housing to the towns and villages in Settlement Levels 1-4 in the County as set out in the Settlement Hierarchy in Table 2.4.

HOU 40 To recognise the sensitive scenic and culturally important landscape in Rural Policy Zone 1 which includes Carlingford Lough and Mountains, part of the UNESCO World Heritage Site of Brú na Bóinne, the Tentative World Heritage Site of Monasterboice, and the Battle of the Boyne Battlefield Site, and the need to carefully manage development in these areas whilst recognising the existing communities in these areas.

HOU 41 To manage the development of rural housing in the open countryside by requiring applicants to demonstrate compliance with the Local Needs Qualifying Criteria relative to the Rural Policy Zone set out in Tables 3.4 and 3.5.

HOU 42 To manage the development of rural housing in the open countryside by requiring that any new or replacement dwelling is appropriately designed and located so it integrates into the local landscape and does not negatively impact or erode the rural character of the area in which it would be located.

HOU 47 To require applications for one off rural housing to comply with the standards and criteria set out in Section 13.9 of Chapter 13 Development Management Guidelines ‘Housing in the Open Countryside’

NBG 36 To protect the unspoiled natural environment of the Areas of Outstanding Natural Beauty (AONB) from inappropriate development and reinforce their character, distinctiveness and sense of place, for the benefit and enjoyment of current and future generations.

5.3.6. Chapter 13 Development Management Guidelines – Entrances and Sightlines.

**Table 13.13: Minimum visibility standards for new entrances**

Road Category	Sight distance (Y)	Visibility requirement over ground	Distance of the sight line from the edge of the	Distance of the sight line from the edge of the carriageway (7

			carriageway (1 to 6 houses) (X distance)	houses or greater or non-domestic developments) (Y distance)
Local Road	75 meters	0.6-1.05 metres	3.0 metres	4.5 metre
Cul-De-Sac	75 meters	0.6-1.05 metres	3.0 metres	4.5 metre

Notes:

1. Where the 85% percentile speed on a local class 2 or a local class 3 rural road is shown to be below 42 kilometres per hour, the minimum sight distance requirements Y contained in the document TII Publication 'Geometric Design of Junctions' DN-GEO-03060 June 2017 or as amended shall apply.
2. Topographical drawings shall be used in demonstrating visibility sightlines.
3. Where the creation of minimum visibility standards involve works on third party lands, the applicant must furnish evidence of a legal right to carry out such works. The applicant shall be requested to submit a formal legal agreement together with a map showing the extent of the lands so affected outside the site boundary and detailing the works required to comply with the visibility splay together with an undertaking from the landowner's solicitor that the agreement will be entered as a burden against the title of the land.

#### 5.4. Natural Heritage Designations

The site is not located within or directly adjacent to a Natura 2000 site. There are however a number of Natura 2000 sites within a 15km radius of the appeal site. The nearest are:

- Carlingford Mountain SAC & pNHA c0.3 to West & Northwest
- Carlingford Shore SAC 0.8km to the East and northeast
- Carlingford Lough SPA & pNHA c1.2km to the East and Northeast

## 5.5. EIA Screening

Having regard to the nature and scale of the proposed development comprising a single dwelling house, domestic garage and associated works, and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can therefore be excluded at preliminary examination and as screening determination is not required

## 6.0 The Appeal

### 6.1. Grounds of Appeal

#### 6.1.1. Refusal Reason 1 – Visual Amenity

- The house design is the same as that previously proposed and accepted under PRR16/778 / ABP300211-17 and PRR20/671
- The site is not backland development suggested, as
  - It is accessed from an existing laneway and blends into the existing rural pattern
  - It is on the same building line as all adjacent houses granted under 05/138; 11/55; 14/61
- There is no existing proliferation of one-off houses in the immediate vicinity as nothing has changed since 2016

#### 6.1.2. Refusal Reason 2 – Local Needs Qualification

- The applicant, Niall Donnelly, lived in the local area of Mountain Park for a period of 12 years, from 1997 to 2012. During this time, he lived with his Mother Anne Donnelly who was head of the household following the death of his father (Eamon) in 1997, Niall was a student at the time.
- Anne received planning permission for a house in 1997, it (Edonlee Lodge) was constructed in 1999.

- The applicant inherited the appeal site from his uncle (Liam) in 2012 who in turn inherited from his parents (applicant's grandparents).
- The applicant now lives at no.8 Ard Cullen, Omeath Village which was purchased in 2007 and rented out for the initial years. This property is not within a rural area but within the village of Omeath.
- The house at Edonlee Lodge was sold in 2012.
- Documentation submitted in support of application:
  - Confirmation that he has not owned a house in the rural area within the last 5 years
  - Copy of post office account details (2003)
  - Letter from postmaster confirming resident in Mountain Park
  - Utility Correspondence
  - Letter from local Councillor
  - Copy of Birth Certificate
  - Letter from the Parish of Carlingford
  - P60 (2003-2004) addressed to Edonlee Lodge, Mountain Park
  - Mortgage Letter, (2009,2012) addressed to Edonlee Lodge, Mountain Park
  - Documents of Family tree
  - Map identify qualifying residence

#### 6.1.3. Refusal Reason 3 – Traffic Safety (Sub-standard Access)

- The applicant was not given the opportunity to response to the further information request of the infrastructural department of Louth Co. Council's
- The laneway is a public laneway as it is used by the members of the public. It is not registered to any one landowner but rather used by all. It has been used by the applicant and his family for generations. Letter from Aunt submitted to evidence same.

- The laneway has been maintained throughout the generations by the landowners each side of the laneway
- It is not possible to obtain legal agreement to do works to the laneway when there are no registered owners.
- The legal interest in the laneway would be a civil matter as opposed to planning
- Reference is made in the submission to previous permissions granted on the laneway without any reference to ownership or otherwise
- The application includes works to re-surface and regard the laneway to achieve a consistent gradient. The width of the lane varies from 4.8 to 7.0m which is sufficient. It is now also proposed to pipe the watercourse at the lane junction.
- Part of the laneway has already been cleaned down to demonstrate its width - the clearing down of the laneway was granted by way of a Declaration of Exemption Ref:S5 2021/05 (copy provided)

#### 6.1.4. Refusal Reason 4 – Traffic Safety (Sightlines at Junction)

- Again, the applicant was not afforded the opportunity to address this issue by way of a further information request
- the site will be approached from the south and east, the west section of the laneway is not being considered.
- The laneway dissipates directly onto the public roadway straight ahead to the east with no junction present so therefore no sightlines are required. Access is not proposed via the west section of the laneway.
- A survey of traffic flows and vehicular speeds was carried out along the L70592 by Abacus Transportation Surveys Ltd over a 7 day period. This survey showed the existing 85% speeds along the L70592 to be 24.1km/hr (eastbound and 26.8km/hr westbound). A report under PA REF16/788 determined that the appropriate visibility requirement in these circumstances as 23m x 2.4m x 1.05/06m. the visibility at the entrance to the laneway to the



public road to the south of the site is 25mx3.0mx0.6/1.05 and 55m x3.0mx 0.6/1.05 which meets this requirement,

- The site will be approached from the south and east, the west section of the laneway is not being considered.
- Reference made to a number of similar developments of one-off rural houses which have been granted by Louth County Council in similar circumstances in terms of visibility

#### 6.1.5. Refusal Reason 5 – Appropriate Assessment

- A site suitability assessment test was carried out as part of the initial application (ABP 300211-17 / PA Ref:16/778). This was also accepted as part of PA Ref: 20/671 and should have been acceptable under this application.
- A site suitability test carried out under the new EPA Code of Practice 2021 has been submitted as part of the appeal documentation. The tests pass and demonstrate that it will not have a negative impact on the Natura 2000 site
- New soakaway tests as per BRE365 have been submitted as part of the appeal documentation.

#### 6.2. **Planning Authority Response**

The Planning Authority add no further comment to the appeal and advice all parties to refer to planners report on file.

#### 7.0 **Assessment**

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

- Policy

- Visual Amenity
- Access and traffic safety
- Wastewater Treatment and Drainage
- Appropriate Assessment

## 7.2. Policy

- 7.2.1. The appeal site is located within the rural area outside of any settlement centre identified within the Louth County Development Plan 2021-2027 (the operative CDP). Due to a number of contributory factors, including the high rate of outbound commuting from the rural areas of Co. Louth to the Dublin Metropolitan Area and the Regional Growth Centres of Drogheda and Dundalk for employment and the levels of one-off housing in rural parts of the County, all rural areas within the County have been identified as ‘rural areas under strong urban influence’. The Sustainable Rural Housing Guidelines advise that houses in such areas may be provided to meet the housing needs of the local rural community, but that urban generated housing should be directed to zoned and serviced lands within settlements
- 7.2.2. National Planning Framework’s National Planning Objective 19 (NPO 19) states that the provision of single housing in rural areas under urban influence is to be based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.
- 7.2.3. Policy Objective HOU 41 of the County Development Plan states that in order to manage the development of rural housing in the open countryside applicants are required to demonstrate compliance with Local Needs Qualifying Criteria relative to their respective Rural Policy Zone. Map 3.2 of the Louth County Development Plan 2021-2027 identifies the appeal site as being within Rural Policy Zone 1 – Area under Strong Urban Influence and of Significant Landscape Value. Table 3.4 of Section 3.17.4 sets out the Local Housing Need Qualifying Criteria relative to Rural

Policy Zone 2; 6 Qualifying Criteria are listed; these Criteria are set out in more detail in section 5.3.3 of this report.

7.2.4. Following consideration of the information / documentation submitted in support of this application and appeal I consider that the applicant would not come within the scope of any of the qualifying criteria listed under table 3.4 as follows:

- Qualifying Criterion 1

No evidence has been submitted that would suggest that the applicant is engaged in full time agriculture as per the requirements of Qualifying Criterion 1

- Qualifying Criterion 2

Criterion 2 refers to the son or daughter of a (qualifying) landowner who is/are seeking to build a first home for permanent occupation. A qualifying landowner is defined as a person who owns a landholding of at least 1.5 hectares and has owned the land for a minimum of 15 years. In addition, the applicant must demonstrate a rural housing need and have a demonstrable social or an economic need to live in the area and shall not have previously owned a dwelling.

Based on the information submitted in support of the application and the appeal I am not satisfied that the applicant would fall within this category (i.e., the son or daughter of a (qualifying) landowner) nor am I satisfied that he has a demonstrable social or economic need to live in the area. In any event, as the applicant currently owns a dwelling in the Level 4 settlement of Omeath, the applicant is excluded from qualifying under Criterion 2.

- Qualifying Criterion 3

No evidence has been submitted that would suggest that the applicant has an established business which is intrinsically reliant on being located in Rural Policy Zone 1 and which as a consequence requires the applicant to reside in Rural area as per the requirements of Qualifying Criterion 3

- Qualifying Criterion 4

No evidence has been submitted that would suggest that the applicant is required to live in the rural area of Rural Policy Zone 1, for exceptional health reasons as per the requirements of Qualifying Criterion 4

- Qualifying Criterion 5

The applicant is not currently a resident of the area, and there is no evidence to suggest that the proposed dwelling is required to facilitate the care for an elderly person(s) or a person(s) with a disability as per the requirements of qualifying criterion 5.

- Qualifying Criterion 6

In accordance with the details provided the applicant purchased a dwelling in the Level 4 Settlement of Omeath in 2007, he is currently resident at this property. Qualifying Criterion 6 is therefore not relevant.

Accordingly, the applicant has failed to demonstrate compliance with the local needs qualifying criteria relative to the Rural Policy Zone 1 as set out in Table 3.4 of the County Development Plan contrary to Objective HOU 41.

7.2.5. In the absence of the identification of a rural housing need, I consider that the proposed development is inconsistent with the national policy framework for rural housing and recommend that permission be refused on that basis.

### 7.3. Visual Amenity

7.3.1. The Planning Authority in its decision to refuse permission raised concerns regarding the potential impact of the proposed development on the rural character of the landscape or the visual amenities of the area. Of particular concern was the elevated location of the appeal site, its distance from the public road and the new works

proposed to the right-of way which have the potential to open up further lands for development.

- 7.3.2. The applicant, in the response to the grounds to the appeal notes that the house design and rural context has not changed from that which was considered acceptable under previous applications and contends that the site is not 'backland development' as it is accessed from an existing laneway and blends to the existing rural pattern.

Whilst I note the planning history associated with the site and the previous assessments and decisions of both the Planning Authority and The Board I consider it appropriate, particularly having regard to the adoption of the new Louth County Development Plan 2021-2027 and the policies and objectives contained therein, to assess this appeal on a de novo basis.

- 7.3.3. The appeal site is located within Carlingford and Feede Mountains Area of Outstanding Natural Beauty as designated in the Louth County Development Plan 2021-2027. These areas are identified by reason of their unspoiled natural landscape, special character and spectacular scenic quality. It is an objective of the County Development Plan to protect the unspoiled natural environment of the Areas of Outstanding Natural Beauty (AONB) from inappropriate development and reinforce their character, distinctiveness, and sense of place, for the benefit and enjoyment of current and future generations.

- 7.3.4. The appeal site is located on the south-eastern slope of Slieve Foye on an elevated site overlooking Carlingford Village and Carlingford Lough beyond. The rural area between the application site and the settlement boundary of Carlingford (located approximately 375m to the west) has experienced a high-rate development, mainly of one-off housing, dispersed throughout a warren of narrow tertiary local roads. The Planning Authority notes that there has been a gradual suburban development encroachment into this rural area due to its elevated location and fine views below and has raised concerns that the proposed development would not only continue this undesirable and unsustainable development pattern but that it would, due to the

proposed upgrade works to the private access lane/track, result in the opening of up further lands for development.

- 7.3.5. Following consideration of the plans and particulars submitted and having visited the appeal site and the general area, I share the concerns of the Planning Authority in this regard. The appeal site is located on an elevated site on the periphery of what could be considered the established built-up area. continued encroachment into the rural area, as a result of one-off piecemeal housing, would I consider be detrimental to the visual amenity and rural character of the surrounding scenic landscape
- 7.3.6. Therefore, having regard to the location of the proposed development in a designated Area of Outstanding Natural Beauty, on the elevated site overlooking Carlingford Village and Carlingford Lough, the site context and the prevalence of existing housing in the wider area, I would consider, that the development of this site irrespective of house design, would contribute to the erosion of the rural character and visual amenities of the area. The proposed development would therefore be contrary to the objectives of the County Development Plan and to proper planning and sustainable development and I recommend that permission should be refused on this basis.

#### 7.4. Access and Traffic Safety

- 7.4.1. The appeal site is served by an unsurfaced access track that connects with the local tertiary road L-70592 to the west and southeast. The applicant is proposing to access the site via the south and east, access from via west is not proposed. The site layout plan submitted in support of the appeal provides sightline details of the junction to the southeast of the application site. Sightline visibility is shown at 55m to the east and 25m to the west (at setback of 3.0m and over a height of 0.6-1.05m). While volume and speed of traffic on the L-70592 may be low (as indicated by the speed survey), I consider the available sightline distance to the west of the junction to be seriously deficient, particularly having regard to its location on a bend and the fact that the sightline is shown to cross third-party lands, over which the applicant has no control.

- 7.4.2. The junction serves a private laneway that is currently accessible to vehicular traffic for a distance of c110m at which point the surfacing of the laneway ceases and its width becomes restricted by stonewalls and overgrown vegetation. I am not satisfied that the applicant has adequately addressed these deficiencies.
- 7.4.3. East of the proposed access route, an open stream crosses a grassed access track leading to the east, the revised plans submitted as part of the appeal documentation detail proposals to pipe this stream, the purpose of these works would appear to facilitate access to the site via an eastern laneway. I note however that these works are located on lands outside of the applicant's ownership / control and as such I would have concerns regarding the long-term maintenance of the culvert. In addition, I consider that the applicant has failed to demonstrate that the access route to the east, which also appears to transverse privately owned lands, would be acceptable in terms of traffic safety.
- 7.4.4. Turning west in the direction of the site, I note, as per the appeal submission, that some clearance works have been carried out, however the track remains of a substandard nature. The ground underfoot is uneven due to the presence of tree roots etc and I observed on the date of inspection, a high volume of surface water flowing west to east along the track.
- 7.4.5. I note that in addition to the piping of the stream the applicant is proposing to carry out upgrade works along this section of the access road in order to facilitate vehicular access to the proposed development. The applicant is proposing to clear vegetation and re-grade and resurface the track with a new gravel / stone surface. These works would be carried out on lands outside of the applicant's ownership and the applicant has failed as part of the application and appeal to demonstrate that he has sufficient control over the lands to carry out the proposed works. While I note that issues of land ownership / interest are civil matter as opposed to a planning matter, the Board must be satisfied that a safe and suitable means of access can be provided to serve the development. I consider that the proposal presented for consideration fails in this regard and I recommend that planning permission be refused on this basis.

## 7.5. Wastewater Treatment and Drainage

- 7.5.1. The proposed development is to be served by a new effluent treatment system and percolation area located to the east of the dwelling. A new well is to be located to the northwest corner of the site, c30m upgradient of the DWWTS. All separation distances appear to accord with EPA guidelines.
- 7.5.2. The Site Suitability Assessment Report records the underlying aquifer as locally important, with the groundwater having moderate vulnerability. The ground protection response for the area has been identified as R1. The EPA CoP indicates that for site which fall within the R1 response category, an on-site system is acceptable subject to normal good practice (i.e. system selection, construction, operation and maintenance in accordance with this CoP).
- 7.5.3. The submitted Site Characterisation Report indicates that a trial hole with a depth of 2.1m was dug. The water table was encountered. During site inspection I noted that the ground was dry under foot, no water was observed in the trial holes.
- 7.5.4. The Site Suitability Assessment recorded a T-Value of 18.47. As such, Table 6.4 of the EPA Code of Practice (2021) confirms that the site is suitable for an on-site wastewater treatment system with discharge to ground.
- 7.5.5. A surface water report incorporating soil infiltration tests has been submitted in support of the area. The tests results indicate that the subsoil has an infiltration rate of 3.00 x 10.5m/s. Surface water from the site is to be directed to 2no soakpits, one to the north of the proposed dwelling and one to the east. An ACO Drain is to be fitted at the entrance onto the lane as the driveway falls towards the lane.

## 7.6. Appropriate Assessment

- 7.6.1. Compliance with Article 6(3) of the Habitats Directive



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.

#### 7.6.2. Background on the Application

The applicant submitted a screening report for Appropriate Assessment as part of the planning application. The Stage 1 AA Screening Report was prepared by EHP Services and includes a description of the project, an identification of Natura Sites with 15km of the subject site and an identification / assessment of the likely effects on the identified sites.

The applicants AA Screening report concluded that the siting proximity, and specifications of the proposed new dwelling, wastewater treatment system and percolation area and associated site development works will have no direct or indirect adverse or diminishing impacts upon the integrity, diversity, structure and function of Carlingford Lough (ROI & UK) SPA or Carlingford Shore SAC or the implementation of their respective conservation objectives and that in light of such a finding it is unnecessary to carry out further environmental assessment though a stage 2 Natura Impact Statement.

The Planning Authority was however of the opinion that due to the lack of adequate proposals surface water drainage and the fact that the proposed wastewater treatment and disposal system was not designed in compliance with EPA Code of Practice 2021, that it was not possible to state that the proposal would not have an adverse impact on the conservation objectives of designated sites in particular Carlingford Lough Shore SAC and SPA through contaminated water reaching these shores.

In response to the concerns raised by the Planning Authority the applicant has submitted an up-to date site suitability test carried out under new EPA Code of Practice 2021 and a soakaway design report including infiltration tests.

Having reviewed the documents submitted, I am satisfied 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.

7.6.3. Screening for Appropriate Assessment – Test of likely significant effects

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).

The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site

7.6.4. European Sites:

The development site is/is not located in or immediately adjacent to a European site.

The AA Screening Document focuses on the potential impact of the proposed development on Carlingford Lough SPA (ROI and UK) and Carlingford Shore SAC. having regard to the sites elevated position and proximity to same. this is considered reasonable.

<b>Table 7.1: Summary Table of European Sites within a possible zone of influence of the proposed development</b>		
<b>European Site</b>	<b>List of Qualifying interest /Special conservation Interest</b>	<b>List of Qualifying interest /Special conservation Interest</b>
Carlingford Shore SAC	Annual vegetation of drift lines [1210] Perennial vegetation of stony banks [1220]	0.8km to the East and northeast
Carlingford Lough SPA	Light-bellied Brent Goose (Branta bernicla hrota) [A046] Wetland and Waterbirds [A999]	c1.2km to the East and Northeast

7.6.5. Identification of Key Significant Effects

### Construction Phase:

Construction phase activity on site will likely include vegetation removal, infill of construction materials / hard landscaping (for laneway improvement works, new driveway / hardstanding areas etc) excavation, dust, and noise disturbance etc.

During the construction phase there is potential for surface water runoff from site works to temporarily flow downhill and discharge adjoining field drains / ditches and ultimately discharge to the designated sites. In my opinion however, the separation distances between the appeal site and designated European site mean that water quality in the European sites would be unlikely to be negatively affected by any contaminants, such as silt from site clearance and other construction activities, due to dilution and settling out over such a distance.

Therefore, the construction phase of this small-scale development would be unlikely to result in significant environmental impacts that could affect the Carlingford Lough SPA and Carlingford Shore SAC or other European Sites within the wider catchment area.

### Operational Phase Impacts:

Operational phase impacts may include direct emissions to air and water, surface water run off containing sediment and contamination, light disturbance, noise, presence of people, vehicles, and activities on site.

The documentation submitted in support of the application and appeal, including the Site Characterisation Report EPA 2021, indicates that the site is suitable for on-site effluent disposal and surface water infiltration. Consequently, deleterious effects on either surface or groundwater in the vicinity of the site, or at distance from it, are unlikely. Notwithstanding this, in the absence of any mitigation measures, having regard to the effect of dissipation, dilution and biodegradation, of potential pollutants in their movement through soil/water at a distance of c0.8-1.2 km from designated sites, significant adverse effects on water quality in the European site are considered unlikely.

### In combination effects

All recent extant and proposed planning applications in the area have been screened for appropriate assessment and where necessary Natura Impact Statements have been submitted and assessed. While I note that there a number of historical one-off rural dwellings and individual on-site wastewater treatment systems in the area, having examined the submitted site investigations report and suitability assessment, I am satisfied that the proposals for onsite wastewater treatment system would be unlikely to have any significant effects that would result in any significant in-combination effects.

#### 7.6.6. **Mitigation Measures**

7.7. 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

#### 7.7.1. **Screening Determination – Finding of no likely significant effect**

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, it has been concluded that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on the Carlingford Lough SPA and Carlingford Shore SAC or any other European site, in view of the sites' Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

This determination is based on the following: Distance of the proposed development from European sites, the lack of meaningful ecological connections to those sites and dilution factor.

### 8.0 **Recommendation**

8.1. I recommend that planning permission be refused for the proposed development based on the reasons and considerations set out below

## 9.0 Reasons and Considerations

1. Having regard to:

- The location of the site within a rural area under urban influence in accordance with Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government 2005.
- National Policy Objective 19 of the National Planning Framework (February 2018) which, for rural areas under urban influence, seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements
- The objectives of the Louth County Development Plan 2021-2027 which seek to discourage urban generated housing in rural areas and to direct proposals for such housing to the towns and villages in Settlement Levels 1-4 in the County and which seek to manage the development of rural housing in the open countryside by requiring applicants to demonstrate compliance with the Local Needs Qualifying Criteria
- The documentation on file which indicates that the applicant's housing need.

It is considered that the applicant does not come within the scope of either the economic or social housing need criteria set out in the overarching National Guidelines or the relevant Local Housing Need Qualifying Criteria of the Development Plan.

The proposed development would result in a haphazard and unsustainable form of development in an unserved area, would contribute to the encroachment of random rural development in the area and would mitigate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be

contrary to national policy, Ministerial Guidelines, the provisions of the Development Plan and to the proper planning and sustainable development of the area.

- 2 The site of the proposed development is located within Carlingford and Feede Mountains Area of Outstanding Natural Beauty as designated in the Louth County Development Plan 2021-2027. It is a stated objective of the County Development to protect the unspoiled natural environment of the Areas of Outstanding Natural Beauty from inappropriate development and reinforce their character, distinctiveness, and sense of place. The proposed development, due to its peripheral location on an elevated site overlooking Carlingford Village and Carlingford Lough and the prevalence of existing housing in the wider area would contribute to the encroachment of random rural development in this high amenity area, intensifying the suburban pattern of housing, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the stated objectives of the Louth County Development Plan 2021-2027 and to the proper planning and sustainable development of the area.
  
- 3 The proposed development would endanger public safety by reason of traffic hazard because the proposed development is located on an un-surfaced access track which is inadequate in width, alignment, gradient, structural condition, and drainage and which is served by substandard junctions with the public 70592 and because the applicant has failed to demonstrate that he has sufficient control over the necessary lands to adequately address these deficiencies.

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Lucy Roche  
Planning Inspector

28<sup>th</sup> January 2022