



An  
Bord  
Pleanála

## Inspector's Report ABP-311703-21

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<b>Development</b>	Construction of a split-level dwelling and all site works.
<b>Location</b>	Salthill Demesne, Mountcharles, Co. Donegal.
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	21/51078
<b>Applicant(s)</b>	Stephen & Catriona O'Sullivan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant, subject to 16 conditions
<b>Type of Appeal</b>	Third Party -v- Decision
<b>Appellant(s)</b>	John Quinn & Julie Griffiths
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	14 <sup>th</sup> April 2022
<b>Inspector</b>	Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located c. 1.9 km to the south-west of the village of Mountcharles, which lies off the N56 to the west of Donegal Town. This site is accessed via the local road network and a cul-de-sac that runs along the sea front to Donegal Bay. Several dwellings are accessed from this cul-de-sac to the west of the site. The site itself is accessed by means of a vehicular track, which runs between the cul-de-sac and a clearing in woodlands to the north. The surrounding area is composed predominantly of woodlands and fields. The appellants' residential property, "Wood Lodge", lies to the north-east of the site.
- 1.2. The site itself is "T" shaped and it extends over an area of 1.1 hectares. The initial portion of the stem of the "T" is relatively flat and thinly wooded. Thereafter, the site rises to the north-west and it is more thickly wooded until a clearing is reached in the RHS of the head of the "T". Adjacent to either side of the clearing run wet ditches. A further wet ditch runs along the foot of the slope to the south-east and onwards to wet ditches that run to the west of the vehicular track and on the northern, landward side of the cul-de-sac.

## 2.0 Proposed Development

- 2.1. The proposal would entail the construction of a split-level, four-bed/eight-person dwelling with a floorspace of 304 sqm. This dwelling would be sited in the aforementioned clearing in the north-eastern portion of the site. It would capitalise upon the site's sloped form. Thus, a smaller lower ground floor would provide bedroom accommodation, and a larger upper ground floor would provide mainly daytime accommodation, which would be accompanied by a raised deck and a courtyard. The dwelling would be composed of rectangular forms under double pitched, straight gabled roofs. It would be finished in timber cladding and sand cement plaster. Window and door joinery would be composed of black aluminium and the roof finish would be blue/black slates/tiles.
- 2.2. The dwelling would be served by the existing vehicular track, which would be upgraded by means of a gravel surface. It would also be served by a mains water connection and a packaged wastewater treatment system and polishing filter, which would be sited to the south-west of the dwelling and within the same clearing.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Following receipt of further information, permission was granted subject to 16 conditions.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The following further information was requested:

- Cross sections showing cut and fill and the finished ground floor level,
- Clarification as to any tree clearing to the south of the proposed dwelling.
- Boundary treatments, including re-specification of site entrance gates.
- Picture window in front elevation of proposed dwelling to be scaled back.
- Letter of consent needed for proposed western sightline.

#### **3.2.2. Other Technical Reports**

Donegal County Council: Roads and Transportation: No objection.

## **4.0 Planning History**

- Site: None
- Adjoining site to the south-east: 04/1230: Outline permission sought for two-and-a-half-storey dwelling: Refused at appeal (PL05.211602) on the grounds of landscape quality/distance from rural service centre, flood risk, and soil/flood risk render site unsuitable for WWTP.

## **5.0 Policy and Context**

### **5.1. National Planning Guidelines**

- National Planning Framework

## 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.*
- Sustainable Rural Housing Guidelines

## 5.2. Development Plan

Under the Donegal County Development Plan 2018 – 2024 (CDP), Donegal Town is categorised as a strategic town in the context of housing land supply and due to its “special economic function” and Mountcharles is categorised as a rural town and open countryside. Under the CDP, the site is shown as lying outside the settlement framework boundary of Mountcharles and in an area of high scenic amenity (Map 7.1.1). The site is also shown as lying in a stronger rural area wherein the following Policy RH-P-3 is applicable to proposed rural housing:

*It is a policy of the Council to consider proposals from prospective applicants in need of housing within an area defined as Stronger Rural Area, provided they demonstrate that they can comply with all other relevant policies of this Plan, including RH-P-1 and RH-P-2, where the applicant can demonstrate that they comply with one or more of the following:*

- ♣ *Persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base, for example, those working in agriculture, forestry, horticulture etc.;*
- ♣ *Persons with a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the existence in the rural*

area of long established ties (7 years minimum) with immediate family members, or by reason of providing care to a person who is an existing resident (7 years minimum);

♣ Persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location. This policy shall not apply where an individual has already had the benefit of a permission for a dwelling on another site, unless exceptional circumstances can be demonstrated. An exceptional circumstance would include, but would not be limited to, situations where the applicant has sold a previously permitted, constructed and occupied dwelling, to an individual who fulfils the bona fides requirements of that permission. New holiday home development will not be permitted in these areas.

Policies RH-P-1 & 2 are set out below:

*It is a policy of the Council that the following requirements apply to all proposals for rural housing:*

- 1. Proposals for individual dwellings shall be subject to the application of Best Practice in relation to the siting, location and design of rural housing as set out in Appendix 4 and shall comply with Policy RH-P-2;*
- 2. Proposals for individual dwellings shall be sited and designed in a manner that enables the development to assimilate into the receiving landscape and that is sensitive to the integrity and character of rural areas as identified in Chapter 7 and Map 7.1.1 of this Plan. Proposals for individual dwellings shall also be located in such a manner so as not to adversely impact on Natura 2000 sites or other designated habitats of conservation importance, prospects or views including views covered by Policy NH-P-17.;*
- 3. Any proposed dwelling, either by itself or cumulatively with other existing and/or approved development, shall not negatively impact on protected areas defined by the North-Western International River Basin District Plan;*
- 4. Site access/egress shall be configured in a manner that does not constitute a hazard to road users or significantly scar the landscape, and shall have regard to Policy T-P-15;*
- 5. Any proposal for a new rural dwelling which does not connect to a public sewer or drain shall provide for the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health and accords with Environmental Protection Agency codes of practice;*

*6. Proposals for individual dwellings shall be subject to the flood risk management policies of this Plan.;*

*7. In the event of a grant of permission the Council will attach an Occupancy condition which may require the completion of a legal agreement under S47 of the Planning and Development Act 2000 (as amended).*

*It is a policy of the Council to consider proposals for a new rural dwelling which meets a demonstrated need (see Policies RH-P-3–RH-P-6) provided the development is of an appropriate quality design, integrates successfully into the landscape, and does not cause a detrimental change to, or further erode the rural character of the area. In considering the acceptability of a proposal the Council will be guided by the following considerations:-*

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

### **5.3. Natural Heritage Designations**

- Donegal Bay SPA (004151)
- Donegal Bay (Murvagh) SAC and NHA (000133)

## 5.4. EIA Screening

Under Item 10(b)(i) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2022, where more than 500 dwelling units would be constructed the need for a mandatory EIA arises. The proposal is for the development of 1 dwelling. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall well below the relevant threshold, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

#### Destruction of natural habitat

- A long-standing heronry exists within the woodlands on the site and Donegal's first recorded pairs of egrets have nested in them. (A link to drone footage of these species is cited). Other birds such as cuckoos and woodpeckers frequent the woodlands and Brent geese visit nearby lands in the winter months.
- Concern is expressed that the proposal, including the driveway and its subsequent use, would result in the loss of canopy, the introduction of wind tunnels, and more general disturbance to the woodlands with the result that their role in providing habitat for these bird species would be jeopardised.

#### Access

- The site access would require to be accompanied by sightlines to the east and to the west over lands that the applicants do not control. The appellants own the requisite lands to the east and they have not given their consent to its use as a sightline. To the west, the sightline would entail the removal of a Scots pine and a mature hedgerow, which act as a wind break at present.
- The cul-de-sac which serves the site access is regularly the subject of a high tides and, with rising sea levels, the viability of this access is questioned.



## Wastewater

- The site is narrow and subject to a steep gradient. Concern is expressed that wastewater and contaminated surface water would flow directly into the nearby Donegal Bay resulting in sea water pollution.

## 6.2. Applicant Response

### Initial comments:

- The appellants' ecological concerns are unsubstantiated: The drone footage shows dead trees largely outside the site where a lack of forest management is evident.
- The appellants' grounds of objection were addressed at the application stage.
- The proposal is designed to be sympathetic to its surrounding woodland environment as is evident from the mitigation measures set out in the NIS, the provisions of the woodland management plan, and the siting of the proposed dwelling in a clearing and its split-level design to capitalise upon the existing site contours.

### The applicants' arborist also comments:

- The proposal would utilise an existing cleared area and an existing track. Only trees identified as being dangerous would be removed and they would be replaced by indigenous species. Accordingly, the existing habitat would be retained and strengthened for bird life.
- The heronry on the site is located in its western leg and so removed from where the proposed dwelling would be sited. Nevertheless, disruptive works would be undertaken outside the heron's nesting season. Egrets were not sighted on the site. However, elsewhere, they are known to colonise areas frequented by herons, in which case the mitigation measures identified with respect to herons would apply to any egrets, too.
- Light and noise generated by the use of the proposed driveway would be minimal.

- No Scots pine would be removed, only a group of Sitka spruce, one damaged oak, and a group of dead and dying Alders.
- Mitigation measures would ensure that Donegal Bay would not be at risk of pollution from the proposal.

### 6.3. **Planning Authority Response**

The Planning Authority reviews the issues raised by the appellants and concludes that they have all been satisfactorily addressed by the applicants.

### 6.4. **Observations**

None

### 6.5. **Further Responses**

None

## 7.0 **Assessment**

7.1. I have reviewed the proposal in the light of the National Planning Framework (NPF), the Sustainable Rural Housing Guidelines, the Donegal County Development Plan 2018 – 2024 (CDP), relevant planning history, the submissions of the parties and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Policy,
- (ii) Amenity,
- (iii) Access,
- (iv) Water, and
- (v) Appropriate Assessment.

### **(i) Policy**

7.2. Under the CDP, the site lies within a stronger rural area. Policy RH-P-3 sets out categories of housing need. The applicants have indicated that their application is

based on the category, which states “A person with a vital link to the rural area by reason of having lived in this community for a substantial period of their lives being 7 years minimum.” Their supporting documentation takes the form of a *bona fide* letter from a councillor, which states that the applicants are both members of the local community, Catriona’s mother is from the neighbouring townland of Dromore, and they both work locally, Catriona, as a school teacher, and Stephen, as an engineer in Mountcharles, which the CDP categorises as a rural town. The letter concludes that they meet the criteria set out in Policy RH-P-3.

- 7.3. Under the Sustainable Rural Housing Guidelines, a distinction is made between those who have an urban and a rural generated housing need. Only those who have the latter housing need are candidates for new rural housing. It is therefore important that applicants demonstrate that they have such a housing need.
- 7.4. Under the current application, the applicants have submitted a supporting letter from a local councillor. The Planning Authority’s supplementary rural housing application form explicitly allows for such a letter to be submitted pursuant to establishing a rural generated housing need and the Planning Authority have accepted the same in this case. Nevertheless, I consider that the contents of the submitted letter are insufficiently clear or detailed to establish that the applicants have a rural generated housing need. Thus, for example, a lack of clarity attends the description of the applicants as being “members of the local community”, the present place of residence of Catriona’s mother, and the whereabouts of Catriona’s “local” workplace. Consequently, I am unable to conclude that the applicants and Catriona’s mother are not residents of an urban area and that Catriona and Stephen do not both work in an urban area. Furthermore, the selected category is one which requires that the applicants demonstrate that they have lived in the community within which the site is located for a minimum of 7 years. The Board may wish to seek clarification under further information.
- 7.5. I conclude that, under the Sustainable Rural Housing Guidelines, the applicants have submitted insufficient information to establish that they have a rural generated housing need.

## **(ii) Amenity**

- 7.6. Under Map 7.1.1 of the CDP, the site is located within an area of high scenic amenity, which comprises fields and woodlands alongside the shoreline to Donegal Bay to the west of Mountcharles. This site lies essentially in a woodland. Under the proposal, the new dwelling would be sited in a clearing and an existing vehicular track would be upgraded to form a driveway. The applicants have submitted a Woodland Management Plan (WMP), which advises on the condition of trees, remedial measures, removal, and new planting. During my site visit, I observed the stumps of four trees within the clearing. The WMP advises that one further tree, a damaged oak tree, should be removed to ensure that the proposed dwelling would not be at risk from it. While no other trees are recommended for removal to facilitate the development, elsewhere in the woodland the WMP recommends some felling and new planting for reasons of good woodland management.
- 7.7. The proposed dwelling would be of split-level form to capitalise upon the rising nature of the clearing in the north-eastern portion of the site. Earthworks involving cut and fill would be undertaken to facilitate this dwelling. These are depicted in the submitted cross-sections. Notwithstanding the assurances of the WMP, I have difficulty in seeing how they could be carried out without affecting surrounding trees in terms of their root systems and overhanging branches. In this respect, the submission of a site layout plan at a scale of 1: 500 allows for insufficient detail to be shown on the canopy spread of trees and by deduction the probable extent of root systems.
- 7.8. The proposed dwelling would provide four-bed/eight-person over a floorspace of 304 sqm. Its smaller lower ground floor would provide bedroom accommodation, and its larger upper ground floor would provide mainly daytime accommodation, which would be accompanied by a raised deck and a courtyard. The dwelling would be composed of rectangular forms under double pitched, straight gabled roofs. It would be finished in timber cladding and sand cement plaster. Window and door joinery would be composed of black aluminium and the roof finish would be blue/black slates/tiles.
- 7.9. Appendix 4 of the CDP is entitled “Building a House in Rural Donegal – A Location, Siting, and Design Guide. Under the heading of “Plan Form”, it advises that “Form,

scale, proportion, and massing are intrinsically linked, and should all be considered carefully, to provide for a sensitive building intervention which sits harmoniously within its environs.”

- 7.10. As originally submitted, the dwelling would have had a picture window within an angular zinc form, which would have been sited centrally on the front elevation in a position that would have sub-divided the upper ground floor deck. Under further information this feature was omitted, as it was judged to be unsympathetic to the design. I concur with the need for this omission. However, the revised front elevation would now appear unduly elongated in form. While its mass would be relieved at its north-eastern end by a projecting gabled element, the length of the accompanying element would cause this elevation to appear unbalanced and so ungainly.
- 7.11. The front elevation would be the “public face” of the dwelling insofar as it would be orientated to the south-east and so it would be visible through trees from the local road network and the cul-de-sac, from which access to the site is taken. While the applicants state that these trees would be retained to afford screening, such wholesale retention would be in conflict with the growth of these trees and the likely aspiration to achieve a clear view of Donegal Bay from the proposed upper ground floor deck with its glazed balustrade and the extensive array of glazed openings in the accompanying expanse of elevation to its rear.
- 7.12. I conclude that the original and revised design of the front elevation of the proposed dwelling, which would be visible from public vantage points, would fail to reflect CDP advice on plan form and so it would not be “a sensitive building intervention which sits harmoniously within its environs.” Accordingly, this dwelling would be seriously injurious to the visual amenities of what is an area of high scenic amenity.

### **(iii) Access**

- 7.13. The site is accessed off the local road network and a cul-de-sac, which runs along the sea front to Donegal Bay. A vehicular track runs from the access point to the site off the cul-de-sac. This informal track runs initially in a northerly direction and then in a north easterly direction to the clearing in the woodland where the proposed dwelling would be sited. Under the proposal, it would be provided with a gravel surface and, as originally proposed, the entrance would have been fitted with electronic gates, which were subsequently omitted under further information.

- 7.14. The cul-de-sac is of single lane width, and it is subject to a speed limit of 80 kmph. The submitted site layout plan shows the site access as being accompanied by the required 3m x 70m sightlines to the east and to the west. Under further information, the applicants obtained the consent of the landowner to the west to achieve the necessary sightline. *Prima facie* some removal of small trees/shrubs would be required in this respect. The appellants are the landowners to the east. They have withheld their consent. However, the eastern sightline is available at present. As it runs over what “reads” as a grass roadside verge, I consider that its availability in the future is likely to persist.
- 7.15. Given existing high tides and projected rising sea levels, the appellants question how viable the proposed site access would be in practise. The submitted site location map shows the high-water mark (HWM) as lying to the south of the cul-de-sac, which serves the site. During my site visit, I observed that boulders have been laid on top of one another to form a sea wall between the HWM and the cul-de-sac. *Prima facie* mitigation measures have thereby been provided to address high tides and rising sea levels.
- 7.16. On-site, the applicants propose to upgrade the vehicular track by laying a gravel surface. During my site visit, I observed that this track was waterlogged in places and so I anticipate that any upgrade would need to establish a satisfactory foundation for the laying of a gravel surface. Details of any foundation works have not been submitted. They may have implications for tree roots and drainage arrangements. The applicants’ WMP effectively acknowledges these implications under its second recommendation for sensitive development.
- 7.17. I conclude that the proposed access point to the site would be capable of being provided in conjunction with the requisite sightlines. I conclude, too, that the applicant has submitted insufficient information to demonstrate that the proposed gravel surface for the on-site vehicular track would be feasible, resilient, and compatible with tree retention and drainage arrangements.

**(iv) Water**

- 7.18. The proposed dwelling would be connected to the public water mains in the cul-de-sac from which the site would take access. The water main connection and boundary box are identified on the site layout plan as being in the mouth of the site access

point from the cul-de-sac. While not explicit on this plan, the implication is that a water pipe would run between this connection and the dwelling under/beside the proposed driveway.

- 7.19. The site is the subject of existing land drainage in the form of a series of connected wet ditches. Under the proposal, these ditches would be “upgraded, cleaned, piped, and backfilled with clean graded stone.” An additional land drain is shown on the site layout plan as being laid to serve the site of the dwelling. This drain would discharge to an existing wet ditch that lies along the foot of the embankment in the north-eastern portion of the site. Appendix 5 of the applicant’s Site Suitability Assessment Report shows it indicatively to the south-west of the dwelling/north-east of the proposed wastewater treatment unit and another one to the south-west of this unit. Both would discharge to the same wet ditch. An accompanying note states that it is imperative that these land drains protect the proposed percolation area from surface water run-off from accompanying higher level lands.
- 7.20. I consider that, in the absence of greater detail, the coherence of the existing and proposed land drainage measures is lacking. Furthermore, the applicants need to be able to justify their proposal to fill-in existing wet ditches on the site, in terms of the efficacy of this approach and any implications that it may have for ecology.
- 7.21. The proposed dwelling would be served by a package wastewater treatment system and polishing filter, which would be sited to the south-west of this dwelling.
- 7.22. The applicant’s Site Suitability Assessment Report was prepared in April 2021 and so before the EPA’s new Code of Practice came into force on 7<sup>th</sup> June 2021. However, the application was made after this date and so the provisions of the new Code are therefore applicable. The Report sets out the following information in relation to the site’s ground conditions:
- The aquifer is locally important and of high vulnerability.
  - The trial hole was dug to a depth of 2.2m and water was encountered 2m down. Bedrock was not encountered and so it is assumed to lie at a lower depth again.
  - Down to a depth of 0.8m, the trial hole was composed of gravelly silt/clay (with some small cobbles and silt). Thereafter, it was composed of blue till.

- 7.23. The applicant's Report cites a response matrix of R2<sub>1</sub>, which suggests extreme vulnerability rather than simply high vulnerability (R1).
- 7.24. The results of the "T" and "P" tests were 67.21 min/25mm and 54.35 min/25mm. These results indicate that the site is not suitable for a septic tank and percolation area, but it would be suitable for a secondary wastewater treatment system with discharge to groundwater.
- 7.25. Under Table 6.2 minimum separation distances between the proposed package wastewater treatment system and the polishing filter are set out. The site layout plan shows the footprint of the polishing filter as being both within the immediate vicinity of and overlapping with the canopy spreads of existing trees. Under Table 6.2, the relevant minimum clearance distance is 3m. It also shows a wet ditch/stream at the foot of the embankment to the south-east, a bare 10m away, i.e., the relevant minimum clearance distance. As surface water in this feature would be c. 2m lower than the existing ground level of the site of the polishing filter, I am concerned that the discharge from it to groundwater, which flows towards the stream, would potentially mean that any pollution of the ground water would affect this stream, too.
- 7.26. The relationship that would exist between the polishing filter and the stream is further complicated by the fact that existing levels over the site identified for this polishing filter fall by c. 2.5 m between its extremities. No details of how the polishing filter would be sited on this site have been submitted. While the applicants have discussed mixing the silt/clay with other soils exhibiting a higher "T" value as an underlying base to the sand in the polishing filter, they have not submitted any detailed design and so they have not demonstrated that the proposed siting would be compatible with the need to safeguard water quality.
- 7.27. The appellants draw attention to the proximity of Donegal Bay to the site and to the fact that surface water ultimately discharges to the sea in this Bay. Consequently, if such water becomes polluted, then the sea could, likewise, be polluted. The applicants respond by stating that the mitigation measures that they proposed would avert such scenarios. In the light of my discussion of drainage matters above, I am unable to set aside the risk that the appellants have highlighted.
- 7.28. I conclude that the applicants have submitted insufficient information concerning the proposed surface water drainage arrangements for the site to enable the



appropriateness of these arrangements to be assessed. I also conclude that they have submitted insufficient information concerning the siting and design of the proposed package wastewater treatment system and polishing filter to enable the appropriateness of these facilities to be fully assessed. Insofar as a provisional assessment can be made, the siting of the polishing filter would be too near to existing trees and a nearby stream to allay concerns over its efficacy and pollution.

#### **(v) Appropriate Assessment**

7.29. The applicants have submitted a Natura Impact Study (NIS), which includes a screening exercise, and the Planning Authority (PA) commented upon this Study and an accompanying Woodland Management Plan (WMP). I will undertake a Stage 1 screening exercise for Appropriate Assessment and a Stage 2 Appropriate Assessment. In doing so, I will draw upon the NIS, the PA's commentary, information available on the NPWS and BirdWatch Irelands' websites, and my own site visit.

#### **Stage 1**

7.30. Under Stage 1, the following question is asked, "Is the project likely to have a significant effect either individually or in combination with other plans and projects on a European Site(s)?"

7.31. The project is for the construction of a dwelling, which would be served by a package wastewater treatment system and polishing filter and an upgraded means of access through a 1.1-hectare woodland site.

7.32. Under the source/pathway/receptor model, two European Sites in nearby Donegal Bay would be, variously, directly and indirectly affected by the project. Thus, the proposed drainage arrangements for surface and wastewater would entail a hydrological link between the site of the project and Donegal Bay SPA (004151) and Donegal Bay (Murvagh) SAC (000133).

7.33. The qualifying interests and conservation objectives of **Donegal Bay SPA** are as follows:

Qualifying interests:

- Great Northern Diver (*Gavia immer*) [A003]
- Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]
- Common Scoter (*Melanitta nigra*) [A065]

- Sanderling (*Calidris alba*) [A144]
- Wetland and Waterbirds [A999]

In the case of each stated bird species, the conservation objective is to maintain its favourable conservation condition. In the case of the wetlands, the conservation objective is to maintain its favourable conservation condition “as a resource for the regularly-occurring migratory birds that utilise it.”

- 7.34. The applicants undertook a bird survey on 16<sup>th</sup> April 2021 of the site and nearby foreshore. This survey recorded two waterbird species over/on the site, i.e., Common Gull (3 in flight) and Grey Heron (2 in flight and 1 roosting). It also recorded five waterbird species<sup>1</sup> over the foreshore, i.e., Common Scoter (7 in flight), Common Gull (5 in flight), Sanderling (9 in flight), Oystercatcher (3 in flight), and Greater Black Backed-Gull (2 in flight). The Common Scoter and the Sanderling are qualifying interests of the SPA.
- 7.35. The applicants NIS states that, while the Great Northern Diver and the Light-bellied Brent Goose were not recorded, the habitat of the former includes the foreshore and the habitat of the latter includes fields adjoining the woodland within which the site is located and the foreshore, too. Accordingly, given the hydrological link between the site and the SPA, any uncontrolled run-off containing sediment and other pollutants would affect the water quality of the sea along the foreshore with potentially adverse impacts on the qualifying interests. Likewise, the environmental impact of the project during its construction and operational phases could disturb the qualifying interests to varying degrees.
- 7.36. No cumulative impacts would arise.
- 7.37. In the absence of mitigation measures, I consider that the project would undermine the conservation objectives of the SPA and give rise to likely significant effects.
- 7.38. The qualifying interests and conservation objectives of **Donegal Bay (Murvagh) SAC** are as follows:
- Qualifying interests:
- Mudflats and sandflats not covered by seawater at low tide [1140]

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<sup>1</sup> Waterbird species are identified in Appendix 4 of the Conservation Objectives Supporting Document for the Donegal Bay SPA.

- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*) [2170]
- Humid dune slacks [2190]
- *Phoca vitulina* (Harbour Seal) [1365]

7.39. In the case of the first and fifth qualifying interests, the conservation objective is to maintain its favourable conservation condition. In the case of the second, third, and fourth qualifying interests, the conservation objective is to restore its favourable conservation condition.

7.40. Map 3 of the Conservation Objectives document for the SAC shows that the first qualifying interest lies along the foreshore to the east of the site. Map 6 shows that the fifth qualifying interest has been recorded breeding in the sea to the south-east of the site. Map 5 shows the remaining qualifying interests further to the south-east on Murvagh Strand.

7.41. Given the hydrological link between the site and the SAC, any uncontrolled run-off containing sediment and other pollutants would affect the water quality of the sea along the foreshore with potentially adverse impacts on the first and the fifth qualifying interests.

7.42. No cumulative impacts would arise.

7.43. In the absence of mitigation measures, I consider that the project would undermine the conservation objectives of the SAC and give rise to likely significant effects.

## **Stage 2**

7.44. Under Stage 2, the following question is asked, “Will the project adversely affect the integrity of a European Site(s) either individually or in combination with other plans and projects in view of the sites conservation objectives?”

7.45. The applicants’ NIS considers the threats to the qualifying interests of the SPA and the first and fifth qualifying interests of the SAC together. While I will follow this approach, I will also consider the threats to the Grey Heron, a waterbird, in greater detail in view of the presence of this bird species in a heronry sited in the north-western portion of the site.

7.46. The threats posed by each stage of the project are set out below:

- Pre-construction phase – site clearance works:
  - Release of suspended sediments into ground and surface waters,
  - Noise, vibration, and dust, and
  - Disturbance of vegetation.
- Construction phase:
  - Release of suspended sediments into ground and surface waters,
  - Noise, vibration, and dust, and
  - Disturbance of vegetation/importation of invasive species.
- Operational phase
  - Release of pollutants into ground and surface waters, and
  - Wildlife disturbance

7.47. The applicants propose to undertake the following mitigation measures:

- During the pre-construction phase:
  - An attenuation pond, silt fencing, and straw bales would be variously formed, erected, and installed in accordance with the site plan under Appendix V of the NIS,
  - Plant and machinery would be maintained and operated in accordance with protocols designed to minimise noise and vibration,
  - Standard dust suppression techniques would be used, and
  - Plant and machinery would be restricted to the access route through the site and the cleared area in which the dwelling would be constructed.
- During the construction phase:
  - The attenuation pond and silt fencing would be retained in-situ,
  - Potential pollutants would be stored and handled in accordance with protocols designed to minimise the risk of leaks/spillages,
  - Trees for retention would be safeguarded, and
  - Any imported fill would be free of invasive species.

- During the operational phase:
  - A hydro-carbon interceptor would be installed in the surface water drainage system and, thereafter, maintained,
  - The recommendations of the Woodland Management Plan (WMP) would be followed, and
  - Exterior lighting would be hooded and of low wattage.

7.48. The applicants' NIS acknowledges the presence of a heronry in the north-western portion of the site. Aerial photographs identify this heronry in mature Scots pines. They also identify the proposed driveway and site of the proposed dwelling in the southern and north-eastern portions of the site. The applicants report having sighted three Grey Herons, during their bird watch survey. During my site visit, I observed the activity of parent herons, and I heard the cry of chicks from their nest(s) at the top of the aforementioned Scots pines.

7.49. The appellants report that the heronry is of long-standing, and they express concern that the proposal, including the driveway and its subsequent use, would result in the loss of canopy, the introduction of wind tunnels, and more general disturbance to the woodlands with the result that their role in providing habitat for this bird species would be jeopardised.

7.50. The applicants have responded by drawing attention to the provisions of their WMP, which would serve to retain and strength the woodlands as a habitat for Grey Herons. They also draw attention to the site of the heronry, which is removed from where the proposed driveway and dwelling would be constructed. They undertake to carry out disruptive works outside the nesting season and they contend that light and noise generated by the subsequent use of the driveway would be minimal.

7.51. During my site visit, I observed that the cul-de-sac, from which access is taken to the site, extends to the south and west of the site and it affords access to several existing dwellings further to the west. I heard a dog barking at one of these dwellings. I, therefore, take the view that the Grey Herons are likely to be habituated to a degree of domestic activity in the wider area of their nest site(s) and attendant vehicular movements.

- 7.52. The BirdWatch Ireland website<sup>2</sup> includes information on Grey Herons. It states that Grey Herons are resident to Ireland, although Grey Herons from Britain and Scandinavia do also winter here. The heronry on the site is therefore one that resident Grey Herons have established and, as non-migratory birds, they are not addressed by the conservation objective of the SPA for waterbirds.
- 7.53. In the light of the above considerations, I accept that the mitigation measures identified by the applicants would be effective in overcoming the identified threats posed by the project to the integrity of the SPA and SAC in view of their conservation objectives.
- 7.54. 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.
- 7.55. Having carried out screening for Appropriate Assessment of the proposed development, it was concluded that it would be likely to have a significant effect on Donegal Bay SPA (004151) and Donegal Bay (Murvagh) SAC (000133). Consequently, an appropriate Assessment was required of the implications of the project on the qualifying features of those sites in the light of their conservation objectives.

Following an Appropriate Assessment, it has been determined that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European Sites Nos. 004151 and 000133, or any other European Site, in view of the Sites' Conservation Objectives.

This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

In particular, it is based on the hydrological link between the site and Donegal Bay and the consequent potential that the project may pollute surface water and groundwater and hence run-off from the site to the sea along the nearby shoreline. However, mitigation measures at each phase of the project would ensure that the risk of such pollution is minimised and so no adverse effects on the integrity of the European Sites Nos. 004151 and 000133 would arise.

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<sup>2</sup> [Grey Heron - BirdWatch Ireland](#) accessed 25<sup>th</sup> April 2022.

## 8.0 Recommendation

8.1. That permission be refused.

## 9.0 Reasons and Considerations

1. Having regard to:

- Objective 19 of the National Planning Framework,
- The Sustainable Rural Housing Guidelines, which distinguish between urban and rural generated housing need, and
- The Donegal County Development Plan 2018 – 2024, which shows the site as lying within a stronger rural area, wherein Policy RH-P-3 is applicable,

It is considered that the applicants have failed to submit sufficient documentary evidence to establish that they have a rural generated housing need.

Consequently, to grant planning permission to their proposed dwelling house in the countryside would be premature and it would risk contributing to the encroachment of random rural development in the area, which 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 national and local planning objectives and to the proper planning and sustainable development of the area.

2. The applicants have submitted insufficient information to ensure that their proposal can be properly assessed. In particular, they have failed to demonstrate the following:

- That the proposed dwelling house and driveway would be capable of being constructed in a manner that would ensure the retention of both adjacent trees and the integrity of on-site drainage arrangements, and
- That the proposed polishing filter would be capable of being installed and operated in a manner that would safeguard the quality of ground and surface waters.

In these circumstances, it would be premature to grant planning permission, as to do so would risk the loss of trees and a corresponding diminution in the amenity and biodiversity value of the woodland, and water pollution and the attendant threat to public health. The proposal would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to:

- Map 7.1.1 of the Donegal County Development Plan 2018 – 2024, which shows the site lying within an area of high scenic amenity, and
- Policy RH-P-1 and Appendix 4 of the County Development Plan, which advise on the location, siting, and design of new rural dwelling houses,

It is considered that, due largely to its unrelieved elongated form, the proposed dwelling house, which would be visible from public vantage points, would appear ungainly and so it would not be a sensitive building intervention which sits harmoniously within its environs. Consequently, this dwelling house would be seriously injurious to the visual amenities of the area, and it would contravene Policy RH-P-1 of the County Development Plan. The proposal would, therefore, be contrary to the proper planning and sustainable development of the area.

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Hugh D. Morrison  
Planning Inspector

25<sup>th</sup> April 2022