



An
Bord
Pleanála

Inspector's Report ABP-311783-21

Development	Refurbishment & construction of extension to derelict house, install septic tank system with percolation area and associated site works.
Location	Magherablad, Creeslough, Letterkenny Po, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2150217
Applicant(s)	Avril Gallagher.
Type of Application	Permission.
Planning Authority Decision	Grant permission.
Type of Appeal	Third Party
Appellant(s)	Josephine Diver.
Observer(s)	None.
Date of Site Inspection	3 rd February 2022.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.475ha and is located at Magherablad, north-east of Creeslough, in north-west County Donegal. The site consists of an irregularly shaped plot that is divided by a linear stand of trees toward its south end. The southern-most part of the site contains a dilapidated building and its curtilage and the majority of the site comprises pastureland.
- 1.2. The dilapidated building is a stone-built structure and at time of my inspection it lay effectively in ruin. The roof had collapsed and openings along the south front elevation were shuttered. The building is substantially overgrown, including a number of mature trees.
- 1.3. There is an open drain along the east site boundary, which drains into Sheephaven Bay, to the north of the site. The site falls gently to the north, toward Sheephaven Bay. At the time of my inspection the site was soft underfoot.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprised refurbishment and extension of an existing derelict house, installation of a septic tank system with percolation area and associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 30th September 2021, subject to 11 No. planning conditions.
 - Condition 2 requires incorporation of an entrance with minimum width at road fence to line of gates of 9.15m, minimum depth from road fence to line of gates of 2.45m and a minimum width on line of gates of 4.9m.
 - Condition 3 requires a full frontage or roadside drain (whichever is appropriate) to be piped with concrete pipes of adequate size

- Condition 5 requires incorporation of an acco channel or similar drainage trap, and suitable pipework, to prevent discharge of surface water onto the public road.
- Condition 8 requires the north, east and west site boundaries to be planted with hedgerow of semi-mature species native to the area and required that 10 trees be planted within the first planting season.
- Condition 10(a) required the wastewater treatment system to be suitable for 5 people. Condition 10(d) required a polishing filter of 75sqm, laid out in a specified manner, be provided.
- Condition 11 required payment of a S48 financial contribution of €1,626.69.

3.2. Planning Authority Reports

3.2.1. Planning reports dated 25th March 2021 and 27th September 2021 have been provided. The first report states that the subject site is in a Stronger Rural Area and that under policy RH-P-3 of the development plan, there is a requirement to demonstrate compliance with local need criteria. The report states that the site is in an area of Especially High Scenic Amenity and High Scenic Amenity, as designated under the county development plan, and references policies NH-P-6 and NH-P-7. The report states that the principle of development is acceptable, subject to other considerations. Concerns are expressed that the derelict building is not accurately identified on the site layout drawing and that not all adjacent houses are identified, within 100m of the site. Regarding the proposed extension, the proposed link between existing and proposed is stated to be excessive and concerns are expressed regarding the form and design of the extension. The report recommends that additional information be sought in relation to: -

1. (a) Applicant to submit scaled plans and elevations for the existing building and a structural engineer's report to verify that it is capable of refurbishment, including details of foundations in place.

(b) Applicant to submit amended design, to reduce the mass of the link element connecting the existing and proposed.

2. Applicant to submit a revised site layout drawing, accurately detailing the location of the existing building on the site and all neighbouring houses within 100m of the site.

3. Applicant to submit a site layout drawing identifying all trees on the site.

3.2.2. The second report followed receipt for the AI response. It summarises and responds to the AI response items and, following assessment, recommends that permission be granted subject to 11 recommended planning conditions. The recommended conditions are consistent with the Planning Authority's decision to grant permission.

3.2.3. Other Technical Reports

The planning report indicates that the application was circulated to the **MD Engineers** office, but that no responding submission was received.

3.3. Prescribed Bodies

3.3.1. The HSE Environmental Health Service made a submission dated 12th March 2021, which recommends 6 no. planning conditions as part of a grant of permission, which relate to the wastewater treatment system.

3.3.2. The Planning Report indicates that Irish Water, An Taisce and the Department of Arts, Heritage and the Gaeltacht (DAU) were consulted on the application but did not make a submission.

3.4. Third Party Observations

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

- Description of development considered to be inaccurate
 - Existing building considered to be a derelict farm shed.
 - Existing walls of the building are not incorporated into the development.
- Scale of development proposed.
- Adequacy of information provided on application form and application drawings.
- Potential impact on bats.

- Compliance with local housing need criteria.
- Impact on agricultural practices in operation in the area.
- Impact on access road and local cycleway.
- Impact on Sheephaven SAC.
- Impact on the character of the area and adjacent residential property.
- Photographs were provided as demonstration that the area contains wildlife habitat.

4.0 Planning History

4.1. I did not encounter any historic planning records pertaining to the site.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

5.1.1. The site is in a rural, unzoned part of County Donegal.

5.1.2. Map 6.2.1 'Rural Area Types' identifies that the site is in a stronger rural area. Section 6.3 contains the rural housing strategy and of relevance to the appeal, Section 6.3.3 states that in Stronger Rural Areas, one-off rural generated housing will be facilitated subject to compliance with all relevant policies and provisions of the plan. Relevant policies include: -

RH-P-1: 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-P15;
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).

RH-P-2: 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 (as elaborated below).

RH-P-3: 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.

RH-P-6: It is a policy of the Council to consider proposals for the refurbishment of derelict buildings (refer to definitions below) within rural areas, for use as either a

permanent dwelling or as a holiday home, subject to (inter alia) the following criteria being satisfied:

(i) The proposed development will provide for the retention of the majority of the existing building.

(ii) The proposed development would integrate effectively within the host rural environment, having regard to the landscape classification set out in Chapter 7 and Map 7.1.1 of this Plan, and would not be detrimental to the visual amenities of the area in question.

(iii) Wastewater from the building can be treated and disposed to current EPA standards,

(iv) there is no road safety impediment to the use of any existing access and

(v) the proposal can demonstrate compliance with other relevant policies of this plan, including all relevant provisions of Policy RH-P-1 and RH-P-2.

(vi) Proposals for extensions in the case of refurbishment shall, in general, not exceed 50% of the size of the original building up to a maximum floor area of 90m². The design, size, height and finishes of the proposed refurbishment/ extension must respect the architectural character of the original building type unless otherwise agreed with the Planning Authority and the finished building must otherwise be of a scale and form such that the development integrates effectively into the host landscape.

RH-P-9: It is a policy of the Council to seek the highest standards of siting and architectural design for all new dwellings constructed within rural areas and the Council will require that all new rural dwellings are designed in accordance with the principles set out in Appendix 4 of the County Development Plan, entitled 'Building a House in Rural Donegal – A Location, Siting and Design Guide'.

5.1.3. According to Map 7.1.1 'Scenic Amenity' the southern-most part of site, where the existing building is located, is in an area of 'High Scenic Amenity' and the main part of the site is in an area of 'Especially High Scenic Amenity'.

5.1.4. Section 7.1.1 of the development plan discusses landscape designations. For areas of High Scenic Amenity states that these areas '*are landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a*

fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.'

5.1.5. For areas of Especially High Scenic Amenity it states that the areas '*are sublime natural landscapes of the highest quality that are synonymous with the identity of County Donegal. These areas have extremely limited capacity to assimilate additional development.*'

5.1.6. Policies NH-P-6 and NH-P-7 are relevant to the development. They state: -

NH-P-6: It is a policy of the Council to protect areas identified as Especially High Scenic Amenity on Map 7.1.1: 'Scenic Amenity'. Within these areas, only developments assessed to be of strategic importance or developments that are provided for by policy elsewhere in this Plan shall be considered.

NH-P-7: Within areas of 'High Scenic Amenity' (HSC) and 'Moderate Scenic Amenity' (MSC) as identified on Map 7.1.1: 'Scenic Amenity', and subject to the other objectives and policies of this Plan, it is the policy of the Council to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape.

5.2. National Planning Policy Framework

5.2.1. National Policy Objective 19 is of relevance to the proposed development. It requires the following:

'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’.*

5.3. Sustainable Rural Housing Guidelines for Planning Authorities

- 5.3.1. The Guidelines identify a number of rural area typologies and accompanying Map 1 provides an indicative outline of these area typologies. According to this indicative map, the subject site is in a ‘predominantly dispersed settlement area’. It is noted from the Guidelines that this map is an indicative guide to the rural area types only and that the development plan process should be used to identify different types of rural area.
- 5.3.2. For stronger rural areas the Guidelines outline that the development plan should *‘consolidate and sustain the stability of the population and in particular to strike the appropriate balance between development activity in smaller towns and villages and wider rural areas.’* It is further advised that in these areas a balance should be struck between accommodating rural housing proposals and facilitating housing development in smaller towns and villages and also monitoring development trends to avoid overdevelopment or ribbon development.
- 5.3.3. The Guidelines require a distinction to be made between urban and rural generated housing needs, in the different rural area types. In relation to the identification of people with rural generated housing needs, the Guidelines refer to ‘Persons who are an intrinsic part of the rural community’ and ‘Persons working full-time or part-time in rural areas. Of relevance to this appeal, ‘Persons who are an intrinsic part of the rural community’ are identified as having *“spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes.”*

5.4. Natural Heritage Designations

- 5.4.1. The site is not located within a European site. Sheephaven SAC is adjacent to the north boundary of the site.

5.5. EIA Screening

- 5.5.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.5.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
 - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.
- 5.5.3. The subject development is for refurbishment and extension of an existing derelict building, installation of a septic tank system with percolation area and associated site works, on a site of 0.475ha. It falls well below both of the applicable thresholds for mandatory EIA, as set out above.
- 5.5.4. In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows: -
- The existing derelict building at the corner of the site is inaccurately sited on the revised site layout plan. The gable end of the building abuts the private lane to the west and it ends at the junction of this lane and a second lane which runs at right angles.
 - An existing telegraph pole that is next to the gable end is not mentioned by the application.

- The structural condition of the building and its ability to support renovation has not been evidenced. Reference is made to the structural engineer's report submitted as part of the AI response, which is considered inadequate.
- The proposed design and footprint are not in keeping with surrounding houses.
- A rule within the county development plan whereby extensions should not be greater than 50% the size of the original build has been overridden by the Planning Authority.
- The revised floor plan provided is questioned, whereby dimensions for the extension have been omitted but the overall length of the existing building has increased without explanation.
- Run-off drains in the direction of Sheephaven SAC. The site suitability report was carried out in dry conditions but the site is boggy for much of the year. There is no reference to a stream which crosses the site.
- Bats are known to roost within the derelict building and bat boxes were removed around the time of the planning application. Bats are subject to legal protection. There is no evidence that the Department of Arts, Heritage and the Gaeltacht commented on the biodiversity issues.
- Curlew visit the area and corn crakes were present some years ago, when the fields were managed. Planning Authority has not assessed this aspect of the development.
- The development will endanger road safety. The proposed build is on the corner, facing traffic, and will present a hazard to road users. This aspect of the development should have been assessed but no traffic safety report was submitted with the application.
- Tree felling likely to be required is not accurately depicted on the revised site layout drawing. Concerns are also expressed regarding the impact of planting of Willow trees on the site.
- The applicant's compliance with rural housing local need criteria is questioned.

6.2. Applicant Response

6.2.1. A response to the appeal was submitted on 22nd November 2021, on behalf of the applicant, by Michael Friel Architects and Surveyors Ltd. The contents of the submission can be summarised as follows: -

- The proposal is to allow for refurbishment and extension of a derelict farmhouse, which was occupied up to the 1970s and which is now used for storage of agricultural machinery. As evidence of its former habitable use, the applicant can provide photographic evidence of a hearth in the house.
- The applicant is seeking to retain the vernacular features of the existing house, which would be linked to a modern, fit-for-purpose living area. This approach is supported by the NPF, with reference to National Policy Objective 17. Reference is also made to regional policy objective 3.3 of the regional spatial and economic strategy, which seeks delivery of 20% of all new housing in rural areas on brownfield sites.
- It is not intended to demolish existing walls, but to restore them and make the house habitable. The description of development in the public notices is not considered to be erroneous.
- The applicant's address was provided as part of the application but was not made public by the Planning Authority as it is personal information. A letter from an elected member is not required where the proposal is for renovation of an existing house.
- The bat boxes which the appellant references were bird boxes, erected by the farmer as part of farming activities to avail of payment. The boxes have been removed ahead of construction of the proposed development. It is considered unlikely that the development will impact on bats, given the brownfield nature of the site.
- In view of the nature of the renovation and extension proposals and compliance with rural housing policies, the Planning Authority did not require submission of information to demonstrate compliance. The applicant complies with RH-P-3 of the development plan.

- The applicant intends to breathe new life into the existing house and to occupy it as a full-time home. The appellant occupies their house as a holiday home.

6.3. Planning Authority Response

6.3.1. The Planning Authority made a submission dated 23rd November 2021, the contents of which can be summarised as follows: -

- The development will not give rise to overlooking of neighbouring property and will not give rise to a traffic hazard. The proposal is considered to be characteristic of existing housing in the immediate area.
- The structural engineer's report provided as part of the AI response is accepted.
- The proposed scale is considered to be appropriate to the site context and the proposed design is considered appropriate.
- Regarding policy RH-P-6, each case is considered on its merits and in this instance, it is considered acceptable that the proposal exceeds 50% of the site of the existing building.
- Reference is made to a favourable response from the HSE EHS in respect to site drainage and an appropriate assessment screening was undertaken, where it was determined that appropriate assessment was not required.
- The applicant provided a site layout plan at the AI stage, indicating that 2 trees along the roadside are to be removed and with all other trees retained. This is considered to be acceptable.

6.4. Observations

6.4.1. None received.

6.5. Further Responses

6.5.1. None received.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal in detail, I consider the main planning issues to be considered are:

- Compliance with the rural housing strategy,
- Design, layout and residential amenity,
- Access,
- Drainage,
- Ecology
- Appropriate assessment.

7.2. Compliance with the Rural Housing Strategy

7.2.1. Development plan policy RH-P-6 allows for consideration to be given to proposals for refurbishment and extension of existing rural buildings in circumstances where (i) the development retains the majority of the existing building, (ii) the development would integrate with the host environment, (iii) wastewater can be treated and disposed to current EPA standards, (iv) there is no road safety impediment to use of an existing access, (v) the proposal is compliant with other relevant provisions of policies RH-P-1 and RH-P-2, and (vi) proposed extensions shall in general not exceed 50% of the original floor area up to a maximum of 90m².

7.2.2. I consider item (v) of the policy is the primary policy criteria to be assessed, before consideration is given to site-specific considerations, as by reference to Policy RH-P-2, it requires applicants to demonstrate a rural housing need.

7.2.3. The subject site is located c.2km north-east of Creeslough, in an area identified by the development plan as a 'stronger rural area'. Development plan policy RH-P-3 is the applicable rural housing policy in stronger rural areas and it requires applicants to comply with one or more of the following criteria: -

- 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.

7.2.4. A supplementary rural housing form was provided as part of the application, indicating that the applicant classifies themselves as being a person with a vital link to the rural area by reason of having lived in the community for a substantial period of their lives being 7 years minimum. But no additional supporting information was submitted with the application so I have not been able to assess and establish compliance with policy RH-P-3.

7.2.5. I note that in responding to the appeal, the applicant asserts compliance with policy RH-P-3 and states that as it was accepted by the Planning Authority that this is a renovation and extension proposal, the application did not require information advising that the applicant complied with rural housing policies.

7.2.6. Policy RH-P-6 is clear in its requirement, by reference to Policy RH-P-2, and in circumstances where a rural housing need has not been demonstrated there is a presumption against the proposed development. A refusal of permission is therefore recommended on this basis.

7.2.7. In addition to demonstrating a rural housing need, I note that policy RH-P-2 also states that rural housing proposals should not create or expand a suburban pattern of development and should not contribute to ribbon development. I noted on my site visit that there is evidence of ribbon development along the private road, including holiday development. There are 8 detached houses in the immediate vicinity of the subject site and whilst it could be argued that the site itself is an infill plot, the proposed development would nevertheless, in my view, contribute to a suburban and unsustainable pattern of development in the area.

7.2.8. I note that the Planning Authority's planning report on the application states that the development is acceptable in principle but the matter of compliance with the rural housing strategy is not addressed in detail.

7.3. Design, Layout and Residential Amenity

- 7.3.1. It is proposed to refurbish and extend the existing dilapidated building. The existing building would be refurbished to provide 3 No. bedrooms (1 en-suite), linked to a proposed single storey extension that provides a utility, bathroom and an open living/dining/kitchen area. The existing building is identified as measuring 61sqm and the proposed extension measures 94sqm. The proposal was amended at the further information stage, following concerns expressed by the Planning Authority regarding mass of the link element that connects the existing building and the main part of the proposed extension.
- 7.3.2. The appellant states that the existing building is inaccurately depicted on the site layout drawing. I note that the location of the building was amended on the site layout drawing provided at the further information stage. I am satisfied that the location shown on this site layout drawing is consistent with the on-site layout.

Proposed house

- 7.3.3. I have given consideration to the proposed internal layout of the house and note that it is adequately sized, in accordance with the recommendations of the *Quality Housing for Sustainable Communities (2007)* guidelines, as referenced by the development plan.
- 7.3.4. The appellant expresses a number of concerns regarding the proposal, including questioning structural condition of the building, its ability to support renovation and the design and footprint of the proposed extension. It is also argued that the extension fails to comply with the development plan requirement that an extension should not be greater than 50% the size of the original build.
- 7.3.5. In responding to the appeal, the applicant States that the proposal allows for refurbishment and extension of a derelict farmhouse, which was occupied up to the 1970s and that they are seeking to retain the vernacular features of the existing house, which would be linked to a modern, fit-for-purpose living area. Reference is made to support provided by national policy objective 17 of the NPF and objective 3.3 of the RSES.
- 7.3.6. Regarding the overall size of the extension, I note that policy RH-P-6 does not set an absolute maximum allowable area for extension proposals and I do not object to the

proposed scale, in view of the low overall height and sensitive design of the extension. I note that the Planning Authority did not object to the proposed scale of the extension.

- 7.3.7. I note that proposed external finishes are not identified on the elevation drawing. Should the Board decide to grant permission I recommend a condition be attached requiring the applicant to agree proposed materials with the Planning Authority.
- 7.3.8. Regarding the structural condition of the building, whilst I note that the appellant questions its ability to support renovation, no additional information has been provided to substantiate the claim. The applicant provided a letter from W.D. Buchanan & Co Ltd Engineers at the further information stage, which states that some sections of wall will require rebuilding but that the walls can support the proposed roof and are capable of being refurbished. I have no information before me which undermines this submission and, with this in mind, I consider it would be unjustifiable to refuse permission on this basis.

Neighbouring houses

- 7.3.9. There are adjacent neighbouring houses to the north-east and north-west. The proposed development is set away from each of these houses and I do not consider the development would impact on the residential amenity of occupiers of these houses.

7.4. Access

- 7.4.1. The site is located on a single lane boreen that runs north-eastward from Creeslough and which serves a number of residential properties and agricultural lands. The section of the road that leads up to the site is identified as a private lane and a wayleave is identified on the site layout drawing.
- 7.4.2. The site is located toward the end of the private lane, in an area where access is also provided to 2 No. holiday homes and 2 No. farm accesses.
- 7.4.3. The site layout drawing identifies the provision of a visibility splay of 2.4m x 70m, south-westward from the site access but having visited the site I consider this is unachievable as it incorporates third party lands that contain trees and hedging, which impede the view. I estimate that a south-westward visibility splay of 2.4m x c.20m can be provided from the site access, equating to that recommended for a 30km/h speed

limit. This is broadly similar to the available visibility from the agricultural access on the opposite side of the lane.

7.4.4. In view of the limited volume of traffic using the lane in this area, coupled with the layout of the lane in this area which requires reduced speeds, I consider a splay of 2.4m x c.20m would be acceptable. I note that the Planning Authority did not express any concern regarding the extent of achievable visibility splays from the access.

7.4.5. Should the Board decide to grant permission I recommend a condition be attached requiring the applicant to agree the site access layout with the Planning Authority.

7.5. **Drainage**

Foul Drainage

7.5.1. The development includes the provision of a packaged treatment plant and polishing filter. The Site Suitability Assessment Report submitted with the application identifies that a Biological Aerated Filter (BAF) mechanical wastewater treatment module will be installed, to the rear of the house. A 75m² polishing filter is identified as being provided to the rear of the house also, set back c.60m from the north site boundary/Sheephaven Bay.

7.5.2. The Site Suitability Assessment Report identifies the category of aquifer as 'poor', with a vulnerability classification of 'high'. Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice Domestic Wastewater Treatment Systems identifies an 'R1' response category i.e., acceptable subject to normal good practice.

7.5.3. A trial hole with a depth of 1.5m recorded 450mm of clay loam and 1050mm of gravelly sandy silt/clay. The trial hole evaluation sheet states that bedrock was encountered at 1.5m and that the water table was not encountered. In relation to the percolation characteristics of the soil, a T-test value of 27.56 min/25mm was returned. The Report concluded that the site is suitable for the installation of a packaged wastewater treatment system and polishing filter and proposes that, in view of the proximity to Sheephaven Special Area of Conservation, a BAF system will be installed.

7.5.4. I note that the HSE Environmental Health Service made a submission on the application, advising on the specification of the wastewater treatment system and polishing filter to be provided on the site.

- 7.5.5. Having regard to the site percolation test results, I consider it has been demonstrated that the site can accommodate a wastewater treatment system. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the detailed specification of the on-site wastewater treatment system with the Planning Authority.

Surface water drainage

- 7.5.6. Surface water is identified on the site layout drawing as draining to an existing drain that runs parallel to the west site boundary and which drains to Sheephaven Bay at the north end of the site. Other details of the surface water drainage system have not been provided.
- 7.5.7. The drainage of surface water from the site gives rise to appropriate assessment issues, as is discussed in Section 7.7 of my report

7.6. Ecology

- 7.6.1. The appellant states that bats are known to roost within the site and that bat boxes have been removed from the site. She also states that curlew are present in the area and that corn crakes were present some years ago.
- 7.6.2. In their response to the appeal, the applicant states that bird boxes had previously been on the site, as part of the farm operation, but have been removed in view of the proposed development. The submission also acknowledges that there are bats in the area.
- 7.6.3. As has previously been stated, the site is substantially overgrown and this includes extensive vegetation in the area of the house. I consider the site has potential to be suitable for roosting bats, but there is no information within the application or appeal documentation which confirms this. The presence of bats on the site would not prevent the proposed development from being carried out but it would require careful consideration of potential impacts, in view of the protected status of all bat species in Ireland. With this in mind, should the Board decide to grant permission I recommend a condition be attached requiring the applicant to agree a programme of bat surveys on the site with the Planning Authority, prior to the commencement of development, and to implement necessary mitigation measures to ensure the safety of any bats on the site as part of the development.

- 7.6.4. Regarding the claimed presence of Curlew in the area, I note that it is an Annex II species under the Birds Directive and available information from NPWS¹ identifies that it is on the Irish red list of species and is the only Irish bird species on the International Union for Conservation of Nature (IUCN) red list. The NPWS Curlew Conservation Programme Annual Report 2021 also states that Curlew breeding territories are held by NPWS and are not disclosed, given the sensitive nature of the species. The Department of Arts, Heritage and the Gaeltacht was consulted on the application, but did not make a responding submission.
- 7.6.5. I have given consideration to Special Protection Area designations in the surrounding area (there are none in the immediate vicinity of the site) and Curlew is not identified as a Species of Conservation Interest for the closest SPA sites (Derryveagh and Glendowan Mountains SPA, Horn Head to Fanad Head SPA or Falcarragh to Meenlaragh SPA). In view of this, and the absence of any evidence that they are present in the area, I consider it would be unjustified to refuse permission on this basis.

7.7. **Appropriate Assessment**

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 7.7.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Background on the Application

- 7.7.2. A screening report for Appropriate Assessment was not submitted with this appeal case. Therefore, this screening assessment has been carried de-novo.

Screening for Appropriate Assessment- Test of likely significant effects

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

¹ <https://www.npws.ie/sites/default/files/general/Curlew.pdf>

Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

7.7.5. The development is described at Section 2 of this Report. In summary, permission is sought for refurbishment and extension of an existing derelict building, installation of a septic tank system with percolation area and associated site works. The site has a stated area of 0.475ha and it consists of an irregularly shaped plot that is divided toward its south end. The southern-most part of the site contains a dilapidated building and its curtilage and the majority of the site comprises pastureland. The site is located at Magherablad, north-east of Creeslough, and is accessed from a private, single lane boreen. Foul drainage is proposed to drain to a packaged treatment plant and polishing filter to the rear of the house and surface water is proposed to drain to an existing open drain that runs parallel to the west site boundary and which drains to Sheephaven Bay at the north end of the site. Sheephaven SAC abuts the rear of the site, to the north.

7.7.6. Taking account of the characteristics of the proposed development, in terms of its location and the scale of works, I consider the following aspects of the development require examination:

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

Submissions and Observations

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

European Sites

7.7.8. The subject site is located adjacent to Sheephaven SAC (Site Code 001190) and there are a number of other European sites within a 10km search zone including: -

- Cloghernagore Bog and Glenveagh National Park SAC (Site Code 002047), c.2.5km south-east,

- Muckish Mountain SAC (Site Code 001179), c.3.3km west,
- Sessiagh Lough SAC (Site Code 000185), c.4.9km north,
- Horn Head and Rinclevan SAC (Site Code 000147), c.6.3km north-west,
- Tranarossan and Melmore Lough SAC (Site Code 000194), c.6.4km north,
- Derryveagh and Glendowan Mountains SPA (Site Code 004039), c.3.9km south-east,
- Horn Head to Fanad Head SPA (Site Code 004194), c.3.9km north.

7.7.9. There is a drainage channel which routes alongside the west site boundary and which drains to Sheephaven Bay and Sheephaven SAC. There are therefore direct and hydrological connections to this site, from the subject site.

7.7.10. In view of the small-scale nature of the development, the distance to the remaining sites within the 10km search zone and in the absence of any hydrological connection to these sites, I am satisfied that there is no real likelihood of significant effects on these European sites and they can be excluded at this stage.

7.7.11. Table 1 below outlines a summary of Sheephaven SAC.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor)
Sheephaven SAC (Site Code 001190)	<ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide, • Annual vegetation of drift lines, • Vegetated sea cliffs of the Atlantic and Baltic coasts, • Salicornia and other annuals colonising mud and sand, • Atlantic salt meadows, • Mediterranean salt meadows, • Embryonic shifting dunes, 	Abuts north site boundary	Direct and hydrological

	<ul style="list-style-type: none"> • Shifting dunes along the shoreline with <i>Ammophila arenaria</i>, • Fixed coastal dunes with herbaceous vegetation, • Humid dune slacks, • Machairs, • Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles, • Marsh Fritillary • Petalwort 		
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Impact on water quality within a European site arising from surface water discharges from the site containing suspended solids and/or pollutants.

- 7.7.12. As has been stated, Sheephaven Bay and Sheephaven SAC adjoins the site at its north end.
- 7.7.13. The site is located adjacent to 'Atlantic salt meadows' and 'Mediterranean salt meadows' habitat within the SAC. The area is likely to be somewhat robust to some suspended solid content within surface waters.
- 7.7.14. Notwithstanding this, I consider the proposed development has the potential to result in the deterioration of water quality within the SAC, on foot of surface water discharges containing suspended solids or pollutants during the construction and operational phases. The drain that routes parallel to the west site boundary is open and proposed construction work will take place in close proximity to it. For the operational phase, all surface water drainage from the site is also identified as discharging to this drain, but details of the nature and design of this system have not been provided as part of the application. In the absence of design details, I am unable to ascertain the adequacy of the proposed system to serve the site.
- 7.7.15. As such, the proposed development may have significant effects on Sheephaven SAC arising from surface water discharges and therefore, the carrying out of an Appropriate Assessment of the proposed development is necessary.

Impact on water quality within a European site arising from the treatment of effluent on the site

7.7.16. Foul water is proposed to be treated within a packaged treatment plant and polishing filter. A Biological Aerated Filter (BAF) mechanical wastewater treatment module is proposed to be installed and the 75m² polishing filter is identified as being set back c.60m from the north site boundary/Sheephaven Bay. The EPA Code of Practice does not specify an absolute minimum setback distance from a heritage feature or NHA/SAC/SPA but I note that it requires a setback of 50m from a lake or foreshore should be maintained. Such a distance is exceeded in this instance.

7.7.17. A Site Suitability Assessment Report was submitted with the application and it identifies that the site is suitable for installation of a packaged treatment plant and polishing filter. Where such site-specific testing has shown the site to be suitable for the treatment of foul waste in this manner and given the separation distance between the system and the SAC, I am satisfied that the potential for likely significant effects on water quality within the SAC is low and can be excluded at this stage.

Screening Determination

7.7.18. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in combination, will have a significant effect on the following European site: -

- Sheephaven SAC, Site Code 001190.

Appropriate Assessment

7.7.19. The conservation objectives for Sheephaven SAC are: (1) To maintain the favourable conservation condition of Mudflats and sandflats not covered by seawater at low tide, (2) To restore the favourable conservation condition of Atlantic salt meadows, (3) To maintain the favourable conservation condition of Mediterranean salt meadows, (4) To restore the favourable conservation condition of Shifting dunes along the shoreline with *Ammophila arenaria* ('white dunes'), (5) To restore the favourable conservation condition of Fixed coastal dunes with herbaceous vegetation ('grey dunes'), (6) To maintain the favourable conservation condition of Machairs, (7) To maintain the favourable conservation condition of Old sessile oak woods with *Ilex* and *Blechnum* in

the British Isles, and (8) To maintain the favourable conservation condition of Petalwort.

7.7.20. As I have previously stated, the site is located adjacent to 'Atlantic salt meadows' and 'Mediterranean salt meadows' habitat within the SAC. These habitat areas are likely to be somewhat robust to some suspended solid content within surface waters.

7.7.21. The proposed development involves excavation and construction work in very close proximity to the open drain and there is a possibility of suspended solids or pollutants being discharged to the drain that would be transferred to the SAC. Furthermore, it is proposed that all surface water from the site will be discharged to this drain, but no details of the surface water drainage system have been provided. Impacts on water quality may affect the wider ecological functioning of the site.

7.7.22. Taking a precautionary approach, in the absence of details regarding construction methods and details of the proposed design and specification of the proposed surface water drainage system, I am unable to ascertain whether the development would adversely affect water quality within the SAC.

Appropriate Assessment Conclusion

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

7.7.24. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Sheephaven SAC (Site Code 001190). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of this sites, in light of its conservation objectives.

7.7.25. Following an Appropriate Assessment, it has not been ascertained beyond a reasonable doubt that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European site No. 001190, in view of the site's Conservation Objectives. This conclusion is based on:

- The close proximity of the proposed development to an open drain adjacent to the west site boundary that provides a route for the discharge of surface water containing suspended solids or pollutants to the European sites.

- The absence of sufficient details regarding the proposed surface water drainage system to serve the proposed development.

7.7.26. Appropriate assessment identified that the proposed development has the potential to lead to significant effects on the European site, arising from discharge of suspended solids and/or pollutants to the drain and, in the absence of details regarding construction methods and proposed mitigation, the likelihood and/or extent of such effects cannot be determined. In these circumstances, adverse effects on integrity of the European sites cannot be excluded.

8.0 Recommendation

8.1. I recommend that planning permission is refused for following reasons and considerations set out hereunder.

9.0 Reasons and Considerations

1. The subject site is located in a stronger rural area, as set out on Map 6.2.1 of the Donegal County Development Plan 2018-2024, where development plan policies RH-P-2 and RH-P-6 together require that applicants who propose to refurbish existing derelict buildings should have a demonstrated rural housing need. The applicant has not provided evidence to demonstrate a rural housing need. In the absence of an identified rural housing need, the proposed development would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development is therefore contrary to the provisions of the development plan and is also contrary to the proper planning and sustainable development of the area.
2. The proposed development is located adjacent to Sheephaven Special Area of Conservation (Site Code 001190) and is hydrologically connected to it by an open drain that routes parallel to the west site boundary and which discharges to Sheephaven Bay. On the basis of the information provided with the application and appeal, and in light of the Stage 2 Appropriate Assessment undertaken, the Board cannot be satisfied that the development, individually, or in combination with other plans or projects, would not be likely to have a significant effect on Sheephaven

SAC, in view of the site's conservation objectives, by reason of the open nature of the west site boundary that allows for direct discharge of surface waters to the drain and in the absence of sufficient details of the proposed surface water drainage system. In such circumstances, the Board is precluded from granting permission.

Barry O'Donnell
Planning Inspector

4th March 2022.