



An
Bord
Pleanála

Inspector's Report

ABP-312388-22

Development	Construction of a dwelling with on-site sewage treatment
Location	Glenineeny, Glen, Co Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2150657
Applicant(s)	Oisin Walsh.
Type of Application	Permission.
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Observer(s)	None.
Date of Site Inspection	10 th March 2022.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.288ha and is located south of the village of Glen, in north-west County Donegal. Glen is a small village at the junction of the L1192 and the Creeslough Road.
- 1.2. The site is effectively a woodland site, forming part of a larger woodland on the west side of the L1192 that characterises the approach to Glen from the south. There is a substantial fall in levels within the site, from a high point in the south-east corner to a low point in the north-west corner that is c.13m lower.
- 1.3. Glen Lough lies to the west of the site. There is a drain adjacent to the north site boundary that traverses the land in the area and which drains into the Lough, which is within the Cloghernagore Bog and Glenveagh National Park Special Area of Conservation and Derryveagh and Glendowan Mountains Special Protection Area.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the construction of a house, together with an on-site sewage treatment system.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority refused permission on 2nd December 2021, for 4 No. reasons as follow: -
 1. The subject site is located within an 'Structurally Weak Rural Area', as defined by the 'Sustainable Rural Housing Guidelines for Planning Authorities' issued by the Department of Environment, Heritage and Local Government in April 2005, and as set out in the County Donegal Development Plan 2018-2024 (as varied). It is an Objective of the Council 'to ensure that new residential development in rural areas provides for genuine rural need' (Objective RH-O-3). It is also a Policy of the Council '... to consider proposals for new one-off housing within structurally weak rural areas from any prospective applicants with a need for a dwelling house (urban or rural generated need), provided they demonstrate that they can

comply with all other relevant policies of this Plan, including RH-P-1 and RH-P-2 and new holiday home development will not be permitted in these areas'. (Policy RH-P-4). On the basis of the information submitted, the applicant has failed to evidentially demonstrate compliance with Policy RH-P-4, and the Planning Authority is not satisfied that the applicant has demonstrated a genuine rural housing need. Therefore, to permit the development would materially contravene the aforementioned policy provisions of the County Donegal Development Plan 2018-2024 (as varied), Ministerial Guidelines and overarching National Planning Policy, and would therefore be contrary to the proper planning and sustainable development of the area and would establish a very undesirable future precedent.

2. The subject site is designated as being in a 'Structurally Weak Rural Area' in the County Donegal Development Plan 2018-2024 (as varied) and it is an objective of the Plan, as set out in RH-O-5 'to promote rural housing that is located, designed and constructed in a manner that is sustainable and does not detract from the character or quality of the receiving landscape'. Furthermore, Policy RH-P-1 of the aforementioned Plan states that 'proposals for individual dwellings shall be sited and designed in a manner that enables the development to assimilate into the receiving landscape and that it is sensitive to the integrity and character of rural areas'. It is also a policy of the Plan that a proposed dwelling '... shall integrate successfully into the landscape and shall not cause a detrimental change to or further erode the rural character of the area' and in doing so, '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'... Policy RH-P-2 also states that '...proposals that result in the removal of trees or wooded areas beyond that necessary to accommodate the development landscape' will not normally be favourably considered. Furthermore Policy NH-P-9 states that 'it is a policy of the Council to manage the local landscape and natural environment... by ensuring any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of the area'. NH-P-10 also states that 'it is a policy of the Council to retain and protect significant stands of existing trees/hedgerows/woodlands... '.

Having regard to (i) the mature and locally distinctive wooded character of the site along this stretch of road (ii) to the site's proximity to the hamlet of Glen (iii) to the loss of unidentified trees and hedgerows, (iv) to the lack of any submitted tree survey, (v) to the emerging pressures in this area evident from recently refused applications for similar development within the vicinity of the subject site, and (vi) to the creation of further opportunity sites immediately north and south of the application site, it is considered that the proposed development would result in the excessive removal of mature trees and hedgerows and create undesirable gap sites immediately north and south of the application site, which if permitted, would set an undesirable precedent for further development and in turn the subsequent removal of further trees and hedgerows, which together would erode this existing natural woodland feature, which defines the character and distinctiveness of this local rural landscape and provides a rural characteristic feature on the approach road into and out of the hamlet of Glen. Accordingly, the proposed development would by reason of itself and the undesirable precedent it would set, cause a detrimental change to and further erode the rural character and visual amenities of this rural area, and cause a detrimental impact on the character, integrity, distinctiveness and scenic value of the area. To permit the development would therefore be contrary to the aforementioned objective and policies of the County Donegal Development Plan 2018–2024 (as varied) and thereby be contrary to the proper planning and sustainable development of the area.

3. The subject site is located within a rural area as designated in the County Donegal Development Plan 2018-2024 (as varied) and it is a policy of the Plan that '...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 in a manner which does not pose a risk to public health and accords with Environmental Protection Agency codes of practice' (Policy RH-P-1 & Policy WES-P-11). On the basis of the submitted substandard site suitability assessment and the absence of an accurate Site Characterisation Assessment in the format required by the Environmental Protection Agency's Code of Practice, for Domestic Waste Water Treatment Systems, 2021, the Planning Authority is not satisfied that the subject site can cater for the safe and effective treatment

and disposal of effluent, in accordance with the necessary EPA standards. Accordingly to permit the proposed development would be prejudicial to public health and would thereby be contrary to Policy RH-P-1 & Policy WES-P-11 of the aforementioned plan and thereby the proper planning and sustainable development of the area.

4. The subject site abuts the Cloghernagore Bog and Glenveagh National Park SAC along the western boundary of the site. The Derryveagh and Glendowan Mountains SPA is also located 230m west of the site, west of the aforementioned SAC, both of which are designated Natura 2000 sites. It is an objective of the Planning Authority (Objective NH-O-2, County Donegal Development Plan 2018-2024 (as varied)) 'to comply with Article 6 of the Habitats Directive (92/43/EEC) and have regard to the relevant conservation objectives, management plans, qualifying interests and threats to the integrity of Natura 2000 sites' and (Objective NH-O-3,) 'to maintain the conservation value of all existing and/or proposed SAC's, SPA's and NHA's and RAMSAR sites including those plant and animal species that have been identified for protection', whereas it is a policy of said Plan (Policy NH-P-1) 'to ensure development proposals do not damage or destroy any sites of international or national importance, designated for their wildlife/habitat significance...including SAC's, SPA's, NHA's, Ramsar Sites and Statutory Nature Reserves'. On the basis of the information submitted in support of the planning application, and in particular the absence of any assessment or competent statement on the likely impact of the proposed development on the conservation objectives of the aforementioned SAC and SPA, their qualifying interests or objectives, particularly in light of the absence of information regarding the full extent of the existing drainage channels to which the proposed development seeks to discharge into, and which are known to the EPA as direct hydrological links into the adjoining SAC, the Planning Authority is not satisfied that the proposed development would not have a significant effect on the integrity of these Natura 2000 sites. Accordingly to permit the proposed development would materially contravene the aforementioned objectives and policies of the County Donegal Development Plan 2018-2024 (as varied) and would thereby be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. A Planning Report dated 1st December 2021 has been provided, which reflects the decision to refuse permission. The report states that no information was provided to demonstrate the applicant's rural housing need, other from a bona fida letter from a County Councillor, and recommends a refusal of permission on this basis. Concerns are expressed regarding the erosion of a woodland area on the west side of the L-1192-3, which includes the subject site and which is seen as characterising the approach road into and out of Glen. The Report does not express any concern regarding the scale and design of the proposed house but refers to the pressure for one-off housing in the area and the incremental impact of housing development on the wooded character of the area. A refusal of permission is recommended on the basis of this impact. Regarding foul drainage, the Report notes the request from the Environmental Health Office that a Site Characterisation Assessment, in the format required by the EPA Code of Practice, should be provided, but this is not pursued given the previously expressed concerns and recommended refusal reasons. Surface water is noted as proposed to drain to an existing open drain, which flows directly into Cloghernagore Bog and Glenveagh National Park SAC. The appropriate assessment screening undertaken within the Planning Report determines that it cannot be excluded that the development would have a significant effect on the SAC and, as such, recommends a refusal of permission on this basis. The Report recommends that permission be refused for 4 No. reasons, which are consistent with the Planning Authority's decision.

3.2.2. Other Technical Reports

A submission from the **HSE Environmental Health Service** dated 10th May 2021 has been provided, which requests that a site characterisation report, prepared in the format required by the EPA Code of Practice, should be provided.

Handwritten comments from the **Area Roads Engineer** dated 4th May 2021 have been provided, which outline no objection subject to a recommended condition.

3.3. Prescribed Bodies

- 3.3.1. The Planning Report indicates that Irish Water, An Taisce and the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (DAU and National Monuments Service) were consulted on the application but did not make a submission.

3.4. Third Party Observations

- 3.4.1. The Planning Report states that no third-party submissions were received on the application.
- 3.4.2. A bona fida letter was received from a County Councillor, outlining the applicant's rural housing need.

4.0 Planning History

0750465 – Permission granted on 10th December 2007 for a house and treatment system. Permission was subsequently granted for an extension of duration of this permission, under Reg. Ref. 1250658. According to the decision notice, permission for the development expired on 9th December 2017.

Relevant nearby planning history

2151233 – *Lands to the south*: Permission refused on 12th August 2021 for a one-and-a-half-storey house, garage, wastewater treatment system and associated site works.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is in a rural, unzoned part of County Donegal. Map 6.2.1 'Rural Area Types' identifies that the site is in a 'structurally weak area'.
- 5.1.2. Section 6.3 contains the rural housing strategy and of relevance to the appeal, Policy RH-P-4 states that in structurally weak areas, proposals for new one-off housing from applicants with a need for a dwelling house (urban or rural generated need) will be considered, provided applicants demonstrate that they can comply with all other

relevant policies of this Plan, including RH-P-1 and RH-P-2. Other relevant rural housing policies include: -

5.1.3. Relevant rural housing policies and objectives are: -

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-4: It is a policy of the Council to consider proposals for new one-off housing within structurally weak rural areas from any prospective applicants with a need for a dwelling house (urban or rural generated need), provided they demonstrate that they can comply with all other relevant policies of this Plan, including RH-P-1 and RH-P-2. New holiday home development will not be permitted in these areas.

RH-O-3: To ensure that new residential development in rural areas provides for genuine rural need.

RH-O-5: To promote rural housing that is located, designed and constructed in a manner that is sustainable and does not detract from the character or quality of the receiving landscape having particular regard to the Landscape Classifications illustrated on Map 7.1.1 and contained within Chapter 7 of this Plan.

- 5.1.4. According to Map 7.1.1 'Scenic Amenity' the site is located in an area of 'High Scenic Amenity'. Section 7.1.1 of the development plan discusses landscape designations and for areas of High Scenic Amenity, it 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.'* Policy NH-P-7 is relevant to the development, stating thus: -

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.

- 5.1.5. Other relevant policies and objectives include: -

NH-P-1: It is a policy of the Council to ensure that development proposals do not damage or destroy any sites of international or national importance, designated for their wildlife/habitat significance in accordance with European and National legislation including: SACs, Special SPAs, NHAs, Ramsar Sites and Statutory Nature Reserves.

NH-P-9: It is the policy of the Council to manage the local landscape and natural environment, including the seascape, by ensuring any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of the area.

NH-P-10: Save to the extent necessary to allow for the provision of the TEN-T Priority Route Improvement Project, Donegal it is a policy of the Council to retain and protect significant stands of existing trees/hedgerows/woodlands, and seek

increased planting of native trees where appropriate in new developments **NH-O-2:** To comply with Article 6 of the Habitats Directive (92/43/EEC) and have regard to the relevant conservation objectives, management plans, qualifying interests and threats to the integrity of Natura 2000 sites.

NH-O-3: To maintain the conservation value of all existing and/or proposed SACs, SPAs, NHAs and RAMSAR sites including those plant and animal species that have been identified for protection under the EU Habitats Directive (92/43/EEC), EU Birds Directive (79/409/EEC as amended by 2009/147/EC), the Wildlife Acts (1976-2014) and the Flora Protection Order (2015).

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 an ‘area under strong urban influence’. 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. 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 subject site is not located within a European site but lies adjacent to Cloghernagore Bog and Glenveagh National Park SAC (Site Code 002047), at the west boundary.

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 comprises a proposed house, sewage treatment system and associated site works, on a site of 0.288ha. 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 purpose of the appeal is to establish the view of the Board in relation to reason No. 2 of the Planning Authority's refusal.
 - Time constraints and the time at which the decision was made meant it was not possible to address the matters raised in items 3 and 4 of the Planning Authority's refusal. These issues are acknowledged as matters that may prevent the Board from overturning the decision to refuse permission.
- Refusal reason No. 2
 - The application was refused because of what may happen on other sites, rather than in relation to the proposed development itself.
 - Permission for a single house on the site would not erode the wooded nature of the area
 - It is up to the Planning Authority to identify that future proposed housing development in the area will not be permitted and to control same.
 - The applicant was unaware that the landowner had agreed to allow another person apply for permission on land adjacent to the site (Reg. Ref. 2151233)
 - The applicant engaged with the woodland trust, who visited the area and were interested in buying land. An emailed response from the woodland trust stated that they had no interest in the subject site.
 - Policy NH-P-10 is not applied consistently and is therefore not an overriding policy. Reference is made to the following grants of permission, each of which involved substantial tree felling: -
 - 1950148 - Glenieraragh, Glen, Carrigart, Letterkenny.

- 1950943 - Clonmass, Port na Blagh, Letterkenny.
- 2051796 - Woodquarter, Cranford, Letterkenny.
- 1850518 - Carn Íseal, Ráth Mealtain.
- 2050056 - Rathmullan and Ballyboe, Rathmullan, Letterkenny.
- 1951136 - Coolboy Little, Letterkenny.
- The proposed house will integrate into the wooded area and will be effectively hidden from public view. The house is of a modest scale and is in-keeping with the local vernacular.
- Should permission be granted, a tree survey will be undertaken to ensure that no mature/specimen trees are removed. It is not envisaged that any such trees will be impacted, based on the proposed layout.
- Refusal reason No. 1
 - The applicant rents an apartment at Port Na Blagh. He is self-employed and works from home.
 - Longstanding family connections to Carrigart are outlined, which are submitted as demonstration of a housing need. A letter from a County Councillor has been provided to confirm this.

6.2. Planning Authority Response

6.2.1. The Planning Authority made a submission on 4th February 2022, the contents of which can be summarised as follows: -

- The majority of issues raised within the appeal have been addressed within the Planning Report.
- The site is located in a structurally weak area, where development plan policy RH-P-4 outlines that proposals will be considered where other policies are complied with, including RH-P-1 and RH-P-2.
- There are 2 elements to the policy; the need to demonstrate a rural housing need and provided the application complies with other relevant policies.

- There are concerns relating to the lack of evidence submitted to demonstrate rural need, including as part of the appeal. The applicant has failed to demonstrate a need to live in this area and thus fails to demonstrate compliance with policy RH-P-4. References to the applicant working from home are noted but it is not clear if they are rural-dependent.
- Regarding the applicant's statements of longstanding family connections to Carrigart, it is unclear whether identified family members live in the village of Carrigart or in the rural hinterland. The site is 7.5-8km south of Carrigart.
- A grant of permission in this instance would be contrary to the development plan, ministerial guidelines and overarching national planning policy.
- Proposed housing developments on the edges of hamlets such as this require careful consideration.
 - The subject site forms part of a distinct wooded area that defines the approach into and out of Glen. Little development has taken place on the west side of the road whereas the character of the east side of the road has been eroded by development. Concerns arise regarding the erosion the woodland character.
 - Refusal of application Reg. Ref. 2151233 and withdrawal of Reg. Ref. 2151906 indicate the Planning Authority's position regarding one-off housing pressures. Protection of local distinctiveness and rural character requires resistance of development along this roadside.
 - Permission for a house in this area would set a precedent for other proposals.
- It should be noted that policy NH-P-9 seeks to manage the local landscape and natural environment, by ensuring that new developments do not detrimentally impact on character, integrity, distinctiveness or scenic value. Policy NH-P-10 seeks to retain and protect significant stands of trees/hedgerow/woodlands.
- Regarding the applicant's reference to other proposed developments in the area, each application must be considered on its own merits.
- Historic applications across the county, including in this area, show that grants of permission for single houses lead to a pattern of ribbon development.

- The Planning Authority's position remains as set out in its decision.

6.3. Observations

6.3.1. None.

6.4. Further Responses

6.4.1. None.

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,
- Residential amenity,
- Drainage,
- Other issues,
- Appropriate assessment.

7.2. Compliance with the Rural Housing Strategy

7.2.1. The site is located south of the village of Glen, in an area of north County Donegal that is classified by the development plan as a 'structurally weak area'. Policy RH-P-4 of the development plan states that in structurally weak areas, proposals for new one-off housing from applicants with a need for a dwelling house (urban or rural generated need) will be considered, provided applicants demonstrate compliance with all other relevant policies of this Plan, including RH-P-1 and RH-P-2.

7.2.2. The National Planning Framework was published subsequent to the development plan and, for rural areas outside of those under urban influence, it also seeks to facilitate single houses in the countryside but includes the proviso '*having regard to the viability of smaller towns and settlements*'.

7.2.3. The *Sustainable Rural Housing Guidelines for Planning Authorities* indicative rural area types map indicates that the site is in an 'area under strong urban influence',

however; I would advise the Board that this map is stated by the Guidelines to be indicative and Section 3.2 of the Guidelines states that it is a matter for the development plan to identify different rural area types, based on further and more detailed analysis.

- 7.2.4. The Planning Authority's concerns, as expressed in the decision, relate to a failure by the applicant to demonstrate a rural housing need and the failure to do so is repeated within the submission on the appeal.
- 7.2.5. As part of the appeal the applicant has provided additional information regarding their housing need, stating that they were born in Carrigart (approx 6km north), attended primary school in Carrigart and have longstanding family connections to the area. The applicant also states that they currently rent an apartment in Port na Blagh (approx 9.5km north-west), are self-employed and generally work from home.
- 7.2.6. Having given consideration to the information provided as part of the application and appeal, I am concerned that the applicant has not demonstrated a housing need in this area, as is required by policy RH-P-4. Moreover, I noted on my site inspection, as the Planning Authority states, that there is pressure for rural housing in the area, particularly to the south. I acknowledge that NPO19 of the NPF seeks to facilitate housing in rural areas outside of those under urban influence but it includes an important proviso that regard should be had to the viability of smaller towns and settlements. In my view the pattern of housing development in the area has the potential to undermine the viability of the smaller towns and settlements in this part of Donegal and a grant of further information in this instance would contribute to this unsustainable pattern of development. In the absence of a demonstrated housing need, I consider the development is contrary to NPO19 of the NPF and a refusal of permission is recommended.
- 7.2.7. Policies RH-P-1 and RH-P-2 contain standards and criteria to guide and control development and of relevance to this appeal, policy RH-P-1 requires proposed houses to assimilate into the receiving landscape, whilst policy RH-P-2 states that a proposed house 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. It goes on to state that 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.

- 7.2.8. The subject site is effectively a woodland site and, as the Planning Authority states, it forms part of a distinctive woodland that characterises the approach to Glen from the south. There is also a substantial fall in levels within the site, from a high point in the south-east corner to a low point in the north-west corner that is c.13m lower.
- 7.2.9. An arboricultural assessment was not submitted with the application and the level of tree felling likely to be required as part of the development has thus not been quantified. Notwithstanding, in my view, there is likely to be a substantial amount of site clearance and tree felling required in order to facilitate construction of the house, driveway and WWTP/percolation area. Indeed, the site layout drawing identifies cleared areas for the house and driveway but shows trees retained within the percolation area and does not, for example, identify any garden area. Further clearance will therefore likely be required in the east part of the site, in order to provide a usable garden space.
- 7.2.10. The provision of identified visibility splays from the site access is also likely to require clearance along the east site boundary and further along the road, in both directions.
- 7.2.11. From my assessment and on-site observations, I agree with the Planning Authority that the development would result in excessive removal of trees from the site, contrary to policy RH-P-2. The development also fails to respect the character of the area and would not, in my view, assimilate into the landscape, contrary to policy RH-P-1. A refusal of permission is recommended on the basis of these concerns.

7.3. Residential Amenity

- 7.3.1. The proposed house has a two-bay form, presenting as a traditional bungalow design along the front elevation and stepping down to the rear, in order to provide a mezzanine level internally. It has a stated gross floor area of 130sqm.
- 7.3.2. 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.

7.4. Drainage

Foul Drainage

- 7.4.1. The development includes the provision of a septic tank and percolation area. Exact details of the wastewater treatment system have not been provided but it can be seen from the site layout drawing that it would be located to the rear of the house and on part of the steep gradient.
- 7.4.2. A site characterisation form has been provided, which is dated 28th August 2007 and which appears to have been provided as part of the previous application at the site in 2007 and in the name of a different applicant, Brian O’Corraidhin. I note in this respect that the HSE Environmental Health Office requested that an updated form be provided, in the format required by the Code of Practice.
- 7.4.3. The site characterisation form is outdated and does not conform to the requirements of the new 2021 EPA Code of Practice. For example, a trial hole 1.6m deep is stated to have been excavated, whereas the Code of Practice requires a trial hole of minimum depth 2.1m or to the bedrock.
- 7.4.4. I would also note that available Geological Survey of Ireland groundwater vulnerability mapping for the area identifies the presence of ‘rock at or near surface or karst’, which would bring into question the outright suitability of the site for a wastewater treatment system.
- 7.4.5. On the basis of the information provided, I am unable to ascertain whether the site can accommodate a wastewater treatment system. A refusal of permission is recommended on this basis.

Surface Water Drainage

- 7.4.6. Surface water is shown on the site layout as draining to an open drain adjacent to the north site boundary that flows in an east-west direction and which drains into Glen Lough, to the west of the site. Specific details of the drainage system have not been provided as part of the application.
- 7.4.7. This open drain is identified by available EPA mapping¹ as originating further to the east, further upland, and ultimately draining into Glen Lough, which lies within both Cloghernagore Bog and Glenveagh National Park SAC and Derryveagh and Glendowan Mountains SPA. The drainage of surface water from the site therefore

¹ <https://gis.epa.ie/EPAMaps/AAGeoTool>

gives rise to appropriate assessment issues, as is discussed in Section 7.7 of my report.

7.5. Other Issues

- 7.5.1. Refusal reason No. 4 of the Planning Authority's decision states that a grant of permission for the proposed development would give rise to a Material Contravention of the Development Plan, by reference to Objectives NH-O-2 and NH-O-3 and Policy NH-P-1, which together seek to ensure that development proposals do not damage sites of international or national wildlife/habitat importance. The Cloghernagore Bog and Glenveagh National Park SAC (Site Code 002047) encroaches to within c.5m of the west site boundary.
- 7.5.2. I have given consideration to this issue in Section 7.8 'Appropriate Assessment' and would note that, where it cannot be objectively concluded that the development would not have a significant effect on a European site, the Board is in any case precluded from granting permission.

7.6. Appropriate Assessment

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 7.6.1. 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

- 7.6.2. 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

- 7.6.3. 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).
- 7.6.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection

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

Brief description of the development

- 7.6.5. The development is described at Section 2 of this Report. In summary, permission is sought for construction of a house, together with an on-site sewage treatment system. The site has a stated area of 0.288ha and consists of a woodland plot that forms part of a larger woodland adjacent to Cloghernagore Bog and Glenveagh National Park SAC. There is also a substantial fall in levels within the site, from a high point in the south-east corner to a low point in the north-west corner that is c.13m lower. The site is located south of the village of Glen and is accessed from a local road, at its east side. Effluent is proposed to drain to a septic tank and percolation area within the rear garden and surface water is proposed to drain to an open drain adjacent to the north site boundary.
- 7.6.6. 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.
 - Removal of suitable ex-situ habitat for species of conservation interest within a European site

Submissions and Observations

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

European Sites

- 7.6.8. The subject site is located adjacent to Cloghernagore Bog and Glenveagh National Park SAC (Site Code 002047) and there are a large number of other European sites within a 15km search zone including: -

- Derryveagh and Glendowan Mountains SPA (Site Code 004039), approx 225m west,
- Sheephaven SAC (Site Code 001190, approx. 2.6km north-west,
- Mulroy Bay SAC (Site Code 002159), approx. 7.1km east,
- Muckish Mountain SAC (Site Code 001179), approx. 8km east,
- Lough Fern SPA (Site Code 004060), approx. 8.7km south-east,
- Leannan River SAC (Site Code 002176), approx 8.7km south-east,
- Sessiagh Lough SAC (Site Code 000185), approx 9.2km north-west,
- Horn Head and Rinclevan SAC (Site Code 000147), approx. 11.3km north-west,
- Horn Head to Fanad Head SPA (Site Code 004194), approx 11.4km north,
- Lough Swilly SPA (Site Code 004075), approx 14.4km south-east,
- Lough Swilly SAC (Site Code 002287), approx. 14.3km south-west,
- Ballyhoorisky Point to Fanad Head SAC (Site Code 001975), approx. 15km north.

7.6.9. There is a drainage channel which routes adjacent to the north site boundary and which drains to Glen Lough, which lies within Cloghernagore Bog and Glenveagh National Park SAC and Derryveagh and Glendowan Mountains SPA. There are therefore direct and hydrological connections to this site, from the subject site.

7.6.10. In view of the small-scale nature of the development, the distance to the remaining sites within the 15km 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.

7.6.11. Summaries of Cloghernagore Bog and Glenveagh National Park SAC and Derryveagh and Glendowan Mountains SPA are presented in the table below.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)
<u>SAC</u>		

Cloghernagore Bog and Glenveagh National Park SAC	<p>Oligotrophic waters containing very few minerals of sandy plains,</p> <p>Water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachium vegetation,</p> <p>Northern Atlantic wet heaths with Erica tetralix,</p> <p>European dry heaths,</p> <p>Alpine and Boreal heaths,</p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils,</p> <p>Blanket bogs,</p> <p>Depressions on peat substrates of the Rhynchosporion,</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles,</p> <p>Freshwater Pearl Mussel,</p> <p>Salmon,</p> <p>Otter,</p> <p>Killarney Fern.</p>	Adjacent to site
<u>SPA</u>		
Derryveagh and Glendowan Mountains SPA	<p>Red-throated Diver,</p> <p>Merlin,</p> <p>Peregrine,</p> <p>Golden Plover,</p> <p>Dunlin.</p>	c.225m west

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

- 7.6.12. As I have outlined, there is an open drain adjacent to the northern site boundary, which flows westward into Lough Glen, which is itself within Cloghernagore Bog and Glenveagh National Park SAC and Derryveagh and Glendowan Mountains SPA.
- 7.6.13. In view of the site characteristics, disturbance of the woodland is inevitable as part of the construction phase and I consider there is a realistic possibility of adverse effects on the SAC arising from surface water discharges containing suspended solids and/or pollutants entering the adjacent drain and thereafter being transferred to the European sites.
- 7.6.14. Surface water for the operational phase is also identified on the site layout drawing as being drained to the open drain but details of the specification or layout of the drainage system have not been provided.
- 7.6.15. In view of the above, the proposed development may have significant effects on Cloghernagore Bog and Glenveagh National Park SAC and Derryveagh and Glendowan Mountains SPA 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

- 7.6.16. Effluent is proposed to be drained to a septic tank and percolation area but details of the system specification have not been provided and additionally, it has not been demonstrated that the site is suitable for treatment of effluent via septic tank and percolation area. Geological Survey of Ireland groundwater vulnerability mapping for the area identifies the presence of 'rock at or near surface or karst', which would bring into question the outright suitability of the site for a wastewater treatment system.
- 7.6.17. In view of the above, the proposed development may have significant effects on Cloghernagore Bog and Glenveagh National Park SAC and Derryveagh and Glendowan Mountains SPA and therefore, the carrying out of an Appropriate Assessment of the proposed development is necessary.

Removal of suitable ex-situ habitat for species of conservation interest within a European site

- 7.6.18. Species of Conservation Interest (SCI) within Derryveagh and Glendowan Mountains SPA include upland and wetland birds. Available information from Birdwatch Ireland indicates that Merlin nest in woodland.
- 7.6.19. No ecological assessment was submitted with the application and I am unclear of the suitability of the subject site for this SCI.
- 7.6.20. Taking a precautionary approach, the proposed development may have significant effects on Derryveagh and Glendowan Mountains SPA and therefore, the carrying out of an Appropriate Assessment of the proposed development is necessary.

Screening Determination

- 7.6.21. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in combination, will have a significant effect on the following European sites: -
- Cloghernagore Bog and Glenveagh National Park SAC (Site Code 002047), and
 - Derryveagh and Glendowan Mountains SPA (Site Code 004039).

Appropriate Assessment

- 7.6.22. The conservation objectives for Cloghernagore Bog and Glenveagh National Park SAC are: (i) To maintain the favourable conservation condition of Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*), (ii) to maintain the favourable conservation condition of Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation, (iii) To restore the favourable conservation condition of Northern Atlantic wet heaths with *Erica tetralix*, (iv) To restore the favourable conservation condition of European dry heaths, (v) To restore the favourable conservation condition of Alpine and Boreal heaths, (vi) To maintain the favourable conservation condition of *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*), (vii) To restore the favourable conservation condition of Blanket bogs, (viii) To restore the favourable conservation condition of Depressions on peat substrates of the *Rhynchosporion*, (ix) To restore the favourable conservation condition of Old sessile oak woods with

Ilex and Blechnum in the British Isles, (x) To restore the favourable conservation condition of Freshwater Pearl Mussel, (xi) To maintain the favourable conservation condition of Atlantic Salmon, (xii) To maintain the favourable conservation condition of Otter, and (xiii) To maintain the favourable conservation condition of Killarney Fern.

- 7.6.23. There is a general conservation objective for Derryveagh and Glendowan Mountains SPA, which is to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

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

- 7.6.24. As I have outlined earlier, disturbance of the woodland is inevitable during construction and there is a realistic possibility of surface water containing suspended solids and/or pollutants entering the adjacent drain and thereafter being transferred to the European sites. Surface water for the operational phase is also identified on the site layout drawing as being drained to the open drain but details of the specification or layout of the drainage system have not been provided.
- 7.6.25. Salmon and Freshwater Pearl Mussel (FPM) are two of the qualifying interests of the SAC.
- 7.6.26. FPM habitat in the area of the site, identified on Map 5 of the Conservation Objectives document, is south of Glen Lough, over 5km from the site. The development is not likely to have a significant effect on these habitat areas, in my opinion.
- 7.6.27. Salmon are vulnerable to water quality impacts. A target of Q4 water quality status for all sites sampled by the EPA within the SAC is outlined by the Conservation Objectives document. Having reviewed EPA mapping, there are a number of sampling sites in the area of Glen Lough.
- 7.6.28. 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 have adverse effects on water quality within the SAC.

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

- 7.6.29. I have previously set out that specification details of the wastewater system have not been provided and additionally, it has not been demonstrated that the site is suitable for treatment of effluent via septic tank and percolation area.
- 7.6.30. I also note, importantly, that Geological Survey of Ireland groundwater vulnerability mapping for the area identifies the presence of 'rock at or near surface or karst', which would bring into question the outright suitability of the site for a wastewater treatment system as it likes to mean there is a fast rate of percolation through to groundwater.
- 7.6.31. In the absence of details regarding confirmation of the suitability of the site to accommodate a wastewater treatment system and specification details of the said system, I am unable to ascertain whether the development would have adverse effects on water quality within the SAC.

Removal of suitable ex-situ habitat for species of conservation interest within a European site

- 7.6.32. There are no site-specific objectives pertaining to SCI of the SPA and no mapping to indicate the distribution of habitats within the SPA site. However, available information from Birdwatch Ireland states that woodland provides suitable nesting ground for Merlin.
- 7.6.33. Taking a precautionary approach, in the absence of an ecological assessment of the potential of the site to provide suitable ex-situ habitat for SCI of the SPA, I am unable to ascertain whether the development would have adverse effects on the SPA.

Appropriate Assessment Conclusion

- 7.6.34. 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.
- 7.6.35. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Cloghernagore Bog and Glenveagh National Park SAC, and Derryveagh and Glendowan Mountains SPA. Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of these sites, in light of their conservation objectives.

7.6.36. 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 Nos. 002047 and 004039, in view of the sites' Conservation Objectives. This conclusion is based on:

- The close proximity and source-pathway-receptor connection between the subject site and the European sites,
- The absence of sufficient details regarding the proposed surface water drainage system to serve the proposed development,
- The absence of demonstration that the site is suitable for the provision of an on-site wastewater treatment system and percolation area and the absence of specification details of the proposed wastewater treatment system, and
- The absence of an ecological assessment of the potential of the site to provide suitable ex-situ nesting habitat for Species of Conservation Interest of the SPA site.

7.6.37. Appropriate assessment identified that the proposed development has the potential to lead to significant effects on the European sites, arising from discharge of suspended solids and/or pollutants to the drain, the treatment of effluent on the site and the clearance of woodland habitat from the site. In the absence of adequate information relating to site characteristics and specification details relating to proposed development, 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. Having regard to:

- The location of the site within a structurally weak area as identified by the Donegal County Development Plan 2018-2024,

- The provisions of the Donegal County Development Plan 2018-2024, which facilitates rural housing proposals in structurally weak areas from prospective applicants with a need for a dwelling house (RH-P-4), provided they demonstrate that they can comply with all other relevant policies of the plan including policies RH-P-1 and RH-P-2,
- National Policy Objective 19 of the National Planning Framework which, for rural areas outside of those under urban influence seeks to 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, and
- The documentation on file provided as part of the application and appeal

The Board considers that, in the absence of a demonstrated housing need at this location, the proposed development would result in a haphazard and unsustainable form of 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 would therefore be contrary to the proper planning and sustainable development of the area.

2. The subject site forms part of a distinctive woodland that characterises the approach to the village of Glen from the south. The proposed development, which will require a substantial amount of clearance, would result in excessive removal of trees from the site, contrary to policy RH-P-2 of the Donegal County Development Plan 2018-2024, which states that a proposed house 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. The development also fails to respect the character of the area and would not assimilate into the landscape, contrary to policy RH-P-1 of the development plan, which requires proposed houses to assimilate into the receiving landscape. The development is therefore contrary to the provisions of the development and is contrary to the proper planning and development of the area.

3. The proposed development is located adjacent to Cloghernagore Bog and Glenveagh National Park SAC (Site Code 002047) and is approx. 225m west of Derryveagh and Glendowan Mountains SPA (Site Code 004039) and is hydrologically connected to both European sites by an open drain that routes adjacent to the north site boundary and which discharges to Glen Lough. 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 the European sites, in view of the sites' conservation objectives, arising from discharge of suspended solids and/or pollutants to the drain, the treatment of effluent on the site and the clearance of woodland habitat from the site that may provide suitable ex-situ habitat for Species of Conservation Interest within the SPA. In such circumstances, the Board is precluded from granting permission.
4. From the information provided as part of the application and appeal, which includes an old site characterisation assessment dated 28th August 2007, the Board is not satisfied that effluent from the development can be satisfactorily treated on site, notwithstanding the proposed use of a proprietary wastewater treatment system. In the absence of adequate demonstration to this effect, the proposed development would, therefore, be prejudicial to public health.

Barry O'Donnell
Planning Inspector

6th April 2022.