



An
Bord
Pleanála

Inspector's Report ABP-312474-22

Development	Planning permission for development to consist of one dwelling house, waste water treatment system and all associated site development work.
Location	Ballyoonan, Omeath, Co. Louth.
Planning Authority	Louth County Council.
Planning Authority Reg. Ref.	211296.
Applicant(s)	Barry Connolly.
Type of Application	Planning Permission.
Planning Authority Decision	Refusal.
Type of Appeal	First Party.
Appellant(s)	Barry Connolly.
Observer(s)	None.
Date of Site Inspection	2 nd April, 2022.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

1.1. The appeal site has a stated 0.284ha site area and it is setback c75m to the west of the R173 (Omeath to Carlingford Regional Road), behind two existing dwellings, on lands in agricultural use with higher ground levels to that of this neighbouring property and the R173's carriageway in the Townland of 'Ballyoonan'. This backland site is accessed via an existing private laneway. This laneway also serves the aforementioned two detached dwellings. A watercourse runs along the northern boundary of the site and flows downhill towards Carlingford Lough to the east. The site is situated c2km to the south east of the centre of Omeath village and c4.5km to the north west of Carlingford Village on the foothills of Carlingford Mountains and in close proximity to the western shoreline of Carlingford Lough.

2.0 Proposed Development

2.1. Planning permission for development to consist of the construction of one single storey four-bedroom dwelling house (220m²), waste water treatment system and all associated site development work.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. By order dated the 9th day of December, 2021, the Planning Authority decided to refuse permission for the following stated reasons:

"1. *The proposed development is contrary to Policy HOU 41 of the Louth County Development Plan 2021-2027 in that the proposed development is located within Development Zone 1 which is identified as an area under strong urban influence and of significant landscape value and the applicant has failed to demonstrate that they comply with one of the Local Housing Need Qualifying Criteria 2 for Rural Policy Zone 1 however the documentation provided is insufficient to demonstrate that the applicant is the son or daughter of a person who owns a landholding of at least 1.5 hectares and has owned the land for a*

minimum of 15 years. This proposal would therefore be contrary to the proper planning and sustainable development of the area.

- 2. Policy Objective HOU 47 of the Louth County Development Plan 2021-2027 requires applications for rural dwellings to comply with the standards and criteria for Housing in the Open Countryside set out in section 13.9 of Chapter 13. Policy objective HOU 42 seeks to prevent rural housing that negatively impacts or erodes the rural character of the area in which it would be located. Having regard to the location of the site in an area under significant pressure for one off rural housing, evident by the high number of one-off dwellings in the vicinity of the application site, it is considered the proposed development would be contrary to policy objective HOU 47 as an additional dwelling in this location would result in further erosion of the rural character of the area which would be contrary to section 13.9.6 'Backland Development'. This would militate against the preservation of the rural environment and would set an undesirable precedent for other similar inappropriate development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
- 3. This proposal is contrary to Policy MOV 56 of the Louth County Development Plan 2021 – 2027 as the application seeks to achieve access to a Protected Regional Route (R173) and the applicant has failed to demonstrate that they qualify for one of the exemptions for the creation of a new or intensification of an existing access as detailed in table 7.10 of the Plan. The applicant has also failed to demonstrate that adequate visibility can be achieved at the junction with the public road as required in Table 13.13 of the Louth County Development Plan 2021-2027. The site layout plan submitted does not show visibility splays of 3m x 215m over a height of 0.6-1.05m above road level in each direction. As such the proposed development would materially contravene the Louth County Development Plan 2021-2027 and would endanger public safety by reason of traffic hazard and obstruction to road users.*
- 4. The proposed development, if permitted would potentially have a negative impact upon the residential amenity of a neighbouring dwelling located to the immediate north-east of this site by reason of overlooking, dominance, and*

general disturbance and as such would be contrary to the proper planning and sustainable development of the area.

5. *The applicant has failed to demonstrate to the satisfaction of the planning authority that the proposed Wastewater Treatment System (WWTS) serving the proposed dwelling complies with the EPA Code of Practice Domestic Waste Water Treatment Systems, Population Equivalent ≤ 10 (2021). The proposed development would, therefore, contravene Policy IU 18 of the Louth County Development Plan 2021-2027 and would be prejudicial to public health.*
6. *The proposed development is considered to be contrary to policy NBG 3 of the Louth County Development Plan 2021 – 2027 in that on the basis of the information provided the Planning Authority cannot be satisfied that the proposed development, individually, or in combination with other plans or projects would not be likely to have a significant effect on Carlingford Shore SAC and Carlingford Lough SPA or any other European Site, in view of the site's Conservation Objectives. In such circumstances, the Planning Authority is precluded from granting permission for the subject development."*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report, dated the 2nd day of December, 2021, is the basis of the Planning Authority's decision and the concerns that it raises all centre around the six stated reasons for refusal which I have set out in Section 3.1.1 of this report above. This report also raises concerns in relation to the large front return proposed as part of the design and layout of the proposed dwelling. Their report concludes with a recommendation to refuse planning permission.

3.2.2. Other Technical Reports

Environment: Concludes with a request for additional information in relation to variety of drainage matters.

Infrastructure: Concludes with a request for additional information in relation to the inadequate sightlines onto the public road; and, the inadequate details provided in relation to the soakaway design.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. Site:

P.A. Ref. No. 2165: On the 11th day of March, 2021, the applicant was **refused** planning permission for a dwelling house, wastewater treatment system and all associated works. The three stated reasons for refusal can be summarised as follows:

1. It was considered that the proposed development would result in an intrusive encroachment of physical development into this open countryside which it would detract from and would set an undesirable precedent. Due to the adverse visual amenity impacts it was considered that the proposed development would be contrary to Policy SS 26 of the Louth County Development Plan 2015 to 2021.
2. It was considered that the intensification of an existing entrance together with the insufficient sightlines onto a Protected Regional Road would be contrary to Policy TC10 & TC12 of the Louth County Development Plan 2015 to 2021 and that it would endanger public safety by reason of a traffic hazard as well as obstruction to road users.
3. The information provided failed to demonstrate that the proposal would not give rise to a significant effect on European Sites and therefore the Planning Authority was precluded from granting permission for the proposed development.

4.2. Vicinity

- **Site c45m to the south of the appeal site:**

ABP-PL15.244378 (P.A. Ref. No. 14/387): On appeal to the Board planning permission was **refused** for a development consisting of permission to raise the

finished floor level of proposed house previously granted planning permission under Ref No: 13/69 and all site development works. The Boards single stated reasons and considerations for refusal read:

“Having regard to:

- the site’s location in a highly attractive scenic rural location to which zoning objective ‘Zone 2’ of the Louth County Development Plan 2009-2015 applies;*
- the high visual sensitivity of the site located in proximity to, and forming part of the visual curtilage of, the designated Area of Outstanding Natural Beauty (AONB1 - Carlingford and Feede Mountains);*
- the provisions of Policy SS 49 Development Plan which requires all such developments to comply with the planning authority guidance document ‘Building Sensitively and Sustainably in County Louth’; and*
- to the nature and extent of the proposed development comprising the raising of the finished floor levels of a dwelling permitted under planning authority register reference number 13/69 and the adjoining ground levels on which the dwelling is set thus effectively creating a raised platform which contrasts with the sloping topography of the site and its setting,*

it is considered that the proposed development would seriously injure the visual character of its landscape setting in a manner that would be contrary to the policies and zoning objective of the Louth County Development Plan 2009-2015, would seriously injure the amenities of this highly scenic area and would be contrary to the proper planning and sustainable development of the area.”

Decision Date: 14th day of May, 2015.

- **Site c458 m to the north:**

ABP-PL15.245951 (P.A. Ref. No. 15/480): On appeal to the Board outline permission was **refused** for a house and garage with all associated site works for the following single stated reasons and considerations:

“The proposed development is located within Development Zone 3 – ‘To protect the recreational and amenity value of the coast’ as designated under the Louth County Development Plan 2015-2021. On the basis of the documentation submitted with the application and appeal the Board considers that the applicant

does not come within the scope of the qualifying criteria for rural housing applicants within Development Zone 3 as set out in Section 2.19.1 of the Development Plan. In these circumstances, it is considered that the proposed development of a dwelling in this rural coastal location would contravene Policy SS 18 and Policy SS 19 and Policy RD 35 of the Louth County Development Plan 2015-2021 and would, therefore, be contrary to the proper planning and sustainable development of the area.”

Decision Date: 21.04.2016.

5.0 Policy & Context

5.1. National

- National Planning Framework – Project Ireland 2040, Department of Housing, Planning and Local Government, (2018).
- Sustainable Rural Housing Guidelines, (2005).
- Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021.

5.2. Development Plan

- 5.2.1. The Louth County Development Plan, 2021-2027, came into effect on the 11th day of November, 2021. Under Map 3.1 of the said plan the site is located in a rural area under urban influence (Rural Category 1) and under Map 3.2 it would appear that the site is located Rural Policy Zone 1 - Area under strong urban influence and of significant landscape value. Table 3.5 of The Development Plan sets out the Local Need Qualifying Criteria in Rural Policy Zone 1.
- 5.2.2. Section 13.9 of the Development Plan deals with the matter of housing in the open countryside. With Section 13.9.1 setting out that countryside is a valuable resource that provides a scenic landscape enjoyed by residents and visitors, and farmland that delivers high quality produce. It also sets out that “*whilst this Plan acknowledges the desire of local residents to live in the rural area, the provision of one-off housing in the*

open countryside must be carefully managed in order to protect the landscape and countryside for future generations to work in and enjoy”.

- 5.2.3. Section 13.9.10 of the Development Plan deals with Garages and Outbuildings in the Countryside. It sets out that: *“garage will normally be positioned to side or rear of the dwelling and will be designed and finished in materials that match the dwelling. The design and scale of any garage shall be proportionate to the dwelling”.*
- 5.2.4. Section 13.9.19 of the Development Plan states: *“applicants for one-off rural housing will be required to demonstrate compliance with the criteria relevant to the specific Rural Policy Zone in which the application site is to be located. The qualifying criteria for each policy zone is outlined in Section 3.17.4 of Chapter 3 ‘Housing”.*
- 5.2.5. Section 13.20.3 of the Development Plan deals with Domestic and Commercial Wastewater Treatment and states that: *“domestic wastewater treatment plants and percolation areas must comply with the Code of Practice Domestic Waste Water Treatment Systems (Population Equivalent ≤10) (EPA, 2021) or any subsequent updated guidance.”*
- 5.2.6. Section 13.16.17 of the Development Plan deals with Entrances and Sightlines. It states that: *“a well-designed access is important for safety and convenience of all road users”.*
- 5.2.7. Table 7.10 of the Development Plan sets out the restrictions and exemptions on Protected Regional Road. It includes the R173 as a Protected Regional Route.
- 5.2.8. Policy Objective HOU 36 of the Development Plan sets out that the Planning Authority will seek: *“to discourage urban generated housing in rural areas and direct proposals for such housing to the towns and villages in Settlement Levels”.*
- 5.2.9. Policy Objective HOU 40 of the Development Plan recognises the sensitive scenic and culturally important landscape in Rural Policy Zone 1 which includes Carlingford Lough and Mountains and sets out that these landscapes need to carefully manage development in these areas whilst recognising the existing communities in these areas.
- 5.2.10. Policy Objective HOU 41 of the Development Plan sets out that the Planning Authority will seek: *“to manage the development of rural housing in the open countryside by*

requiring applicants to demonstrate compliance with the Local Needs Qualifying Criteria relative to the Rural Policy Zone set out in Tables 3.4 and 3.5’.

- 5.2.11. Policy Objective HOU 42 of the Development Plan seeks to manage the development of rural housing in the open countryside by requiring that any new or replacement dwelling is appropriately designed and located so it integrates into the local landscape and does not negatively impact or erode the rural character of the area in which it would be located.
- 5.2.12. Policy Objective HOU 47 of the Development Plan requires applications for one off rural housing to comply with the standards and criteria set out in Section 13.9 of Chapter 13 Development Management Guidelines ‘Housing in the Open Countryside’.
- 5.2.13. Policy Objective NBG 36 of the Development Plan seeks to protect the unspoiled natural environment of the Areas of Outstanding Natural Beauty (AONB) from inappropriate development and reinforce their character, distinctiveness, and sense of place, for the benefit and enjoyment of current and future generations.
- 5.2.14. Table 13.13 of the Development Plan sets out the Minimum visibility standards for new entrances.

5.3. Natural Heritage Designations

- 5.3.1. The site does not form part of nor is it adjacent to a Natura 2000 site. Notwithstanding, there are a number of Natura 2000 sites within its setting. The nearest such sites are:
- Carlingford Shore SAC (Site Code: 002306) which is located c186m to the east of the site at its nearest point.
 - Carlingford Mountain SAC (Site Code: 000453) which is located c380 m to the west at its nearest point.
 - Carlingford Lough SPA (Site Code: 004078) which is located c5m to the south east at its nearest point.
 - Dundalk Bay SAC (Site Code: 000455) which is located c8.6km to the south west at its nearest point.
 - Dundalk Bay SPA (Site Code: 004026) which is located c9.3km to the south west at its nearest point.

5.4. EIA Screening

- 5.4.1. The proposed development comprises a 'project' for the purposes of environmental impact assessment and falls within a class set out in Part 2, Schedule 5 of the Planning and Development Regulations, 2001 (as amended), Infrastructure Projects, construction of dwelling units.
- 5.4.2. The development is significantly below the threshold for the class. Notwithstanding as set out in Section 5.3.1 above it is located in close proximity to Carlingford Shore SAC (Note: c186m) and it also lies c380m to from Carlingford Mountain SAC. Notwithstanding, the Carlingford Mountain SAC is located at significantly higher ground levels to that of the site which lies on its foothills.
- 5.4.3. In addition to this, the site is bound by a watercourse on its northern side which discharges to Carlingford Lough and hence Carlingford Shore SAC.
- 5.4.4. Based on the information submitted with this appeal the applicant has demonstrated that the that surface water and wastewater will be discharged on site, with no adverse with no adverse effects on the aforementioned European sites or any others in the wider vicinity the need for environmental impact assessment can be excluded at preliminary examination and a screening determination is in my view not required for this subthreshold proposed development.

5.5. Built Heritage

- 5.5.1. None of relevance.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows:
- The appellant contends that the documents provided with this application and with their grounds of appeal prove that they have a local housing need.
 - The proposed development is fully compliant with planning provisions.
 - The appellants circumstances meet the exemption to access onto a Protected Regional Route via the existing laneway.

- The proposed dwelling has been designed and sited to ensure that no overlooking arises to the dwelling to the north of the proposed site.
- As the proposed dwelling is 42m away the proposed dwelling would not give rise to any overbearing impact.
- The waste water treatment system and percolation area would be compliant with the EPA Code of Practice, 2021, requirements.
- At no stage was there a request for an Appropriate Assessment Screening Report to be carried out. The preparation of such a report can be carried out now or conditioned as part of a final grant of permission.
- The land on which permission has been applied for has been in their family since before famine times and is only in the appellants fathers name since 2017.
- Planning permission has been granted in several cases in the locality on land that does not belong to the applicant even though they qualify as having a local need including where site is for sale as a local need. If the ownership of land is such a strict condition, then it should apply in all cases.
- The Planning Authority are at fault for the high number of dwellings in this locality and this is not a legitimate argument to support a reason for refusal. .
- Improving sightlines at the junction of the lane onto the R173 would not endanger public safety by reason of a traffic hazard but would do the opposite.
- It is not accepted that the proposed development would have a negative impact on any properties amenities.
- The village of Omeath has no sewage treatment plan and yet permission has been granted for several new houses with untreated sewage being discharged into Carlingford Lough.
- Rural housing is important in sustaining rural communities.
- It is argued that the Planning Section of the Planning Authority never intended to grant permission for this development.
- This is not another development for a holiday home.

- This proposal would allow for him to live beside his father who is contended to have medical issues and to live beside his sister.
- Other dwellings have been permitted on similar sites in the area.
- The appellants sister and another neighbour has consented to modifying their roadside boundaries to achieve the required sightlines.
- There are several houses closer the stream than the proposed development.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- It is highlighted that the Louth County Development Plan, 2021-2027, was the operative plan at the time this application was lodged and within this plan the site is located within Rural Policy Zone 1 and this application was assessed under Criteria 2 which relates to the son or daughter of a landowner.
- Reference is made to the Development Plans definition of a 'landowner'. The applicant has not demonstrated that they meet this definition as the land has not been in their family's ownership for the required 15 years.
- This application was not assessed under any other qualifying criteria as the applicant did not provide any information in relation to the same.
- This site is a backland site and would, if permitted, have adverse impact on the residential amenity of neighbouring residents. In this regard, particular concern is raised in relation to privacy and ownership of the dwelling is not considered relevant in terms of loss of amenity and considering the pronounced level of the site above the rear amenity space of the neighbouring property together with the lack of substantial boundary definition between the two.
- Adequate information demonstrating that no adverse effect would arise on any European Site from the proposed Wastewater Treatment System was not provided as part of the documentation for assessment of this application. The site is located in close proximity to a European Site, and it is directly linked via a watercourse that runs alongside the north-western boundary of the site which

provides a means for untreated wastewater to enter protected designated areas.

- It is highlighted that each application is considered on their merits, the planning policy provisions, and information provided at the time of assessment.
- It is noted that there has been a proliferation of short-term holiday lets within this area of the Cooley peninsula mainly as holiday leases. The Council has carried out extensive work within the last year to address this issue.
- The appellant has not addressed the fundamental issues of concern in relation to this application which is demonstrating that they meet the qualifying criteria, backland development, drainage, and access concerns.

6.3. Observations

6.3.1. None.

7.0 Assessment

7.1. Introduction

7.1.1. Having regard to the information on file, my inspection of the appeal site, the planning history of the site and setting, together with having regard to relevant planning policy provisions and guidance pertaining to the type of development sought under this application I consider that the substantive matters that arise in this appeal case relate to the Planning Authority's six stated reasons for refusal. These matters I propose to deal with under the following broad headings in my assessment below.

- *Principle of the Proposed Development and Compliance with Planning Policy for One-Off Rural Housing*
- *Visual Amenities and Backland Development*
- *Access*
- *Residential Amenity Impact*
- *Drainage*
- *Appropriate Assessment*

- 7.1.2. I also note that the appellant in their grounds of appeal raise procedural concerns in terms of the Planning Authority's handling of their application. On this matter I note that the Board does not have an ombudsman role and its remit is the *de novo* consideration of the proposed development sought under this planning application by way of this Third-Party Appeal. That is to say that the Board considers the proposal having regard to the same planning matters to which a Planning Authority is required to have regard when making a decision on a planning application in the first instance and this includes consideration of all submissions and inter departmental reports on file together with the relevant development plan and statutory guidelines, any revised details accompanying appeal submissions and any relevant planning history relating to the application. With each proposal considered on its individual merits.
- 7.1.3. In this regard, I note to the Board that this application is accompanied by a revised Site Characterisation Form and revised drawings. The information they contain does not give rise to any significant change to the proposed development sought. But simply seek to address mainly the drainage and sightline concerns that in part gave rise to the refusal of the development sought under this application.
- 7.1.4. In relation to the planning history of the site's locality and its setting which are raised by the appellant in their grounds of appeal submission I note that there are no recent and/or relevant Board precedent whereby a similar application has been favourably considered.
- 7.1.5. Further, the Board as the higher authority is not bound by any Planning Authority precedent. I also note that relevant local through to national planning policy provisions and guidance in relation to this type of development at this highly scenic and environmentally sensitive location has significantly evolved over recent decades.
- 7.1.6. In addition, the cumulative impact, and the ability of a rural not serviced landscape which in this case has a high sensitivity to change and one that has been subject to significant *ad hoc* and piecemeal similar developments and its capacity to absorb further such developments is a valid consideration in the assessment of an application for development.

7.2. Principle of the Proposed Development and Compliance with Planning Policy for One-Off Rural Housing

- 7.2.1. This appeal site is located in an area defined as being under strong urban influence as defined in the Sustainable Rural Housing Guidelines for Planning Authority's, 2005. This is due to a number of locational factors including but not limited to its proximity to a number of large urban areas, including Dundalk and Newry as well as its proximity to the M1 corridor allowing easy access to Dublin and Dublin Airport. Indeed, all of the rural areas of County Louth fall within the category of '*rural areas under strong urban influence*' by reason of the locational factors already noted previously but crucially because of their proximity to Dublin.
- 7.2.2. In relation to national planning provisions, I note that National Planning Objective 19 of the National Planning Framework is of particular relevance to the development sought under this application in that it seeks to direct urban generated housing need into towns and villages. NPO 19 requires developments like this to demonstrate a functional economic or social requirement for housing need in areas under urban influence. With this being stated as a necessity.
- 7.2.3. It advocates that in rural areas under urban influence that the provision of single housing in the countryside should be based on the core consideration of demonstrable economic or social need to live in a rural area, subject to safeguards. Including but not limited to design, siting, and other criteria. It also seeks that regard is had to the viability of smaller towns and rural settlements.
- 7.2.4. Further, the NPF under National Policy Objective 3a seeks to deliver at least 40% of all new homes nationally within the built-up footprint of existing settlements and National Policy Objective 33 seeks to prioritise the provision of new homes at locations that can support sustainable development as well as at an appropriate scale of provision relative to location.
- 7.2.5. There are settlements within the wider location, including those with infrastructural services such as mains drainage and potable water supply through to other services as well as amenities, where there is latent capacity to absorb additional residential development in a more sustainable manner than at this location. In locations within settlements on zoned serviced lands dwellings are also less reliant on use of private vehicles and there are likely to be more public transportation options. This together

with proximity to services and other amenities synergistic to residential development inevitably results in a more climate resilient residential development which is a core consideration and direction in national planning provisions and guidance.

- 7.2.6. At a regional level I note that the Regional Spatial Economic Strategy – Eastern & Midland Region, 2019-2031, under RPO 4.80 sets out that Local Authorities shall manage growth in rural areas under strong urban influence by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstratable economic or social need to live in a rural area. In addition, it advocates compliance with statutory guidelines and plans alongside having regard to the viability of smaller towns and rural settlements by channelling this type of development to them.
- 7.2.7. At a local level, Policy Objective HOU 41 of the Development Plan sets out that the Planning Authority will seek to manage the development of rural housing in the open countryside by requiring applicants to demonstrate compliance with the local needs qualifying criteria relative to the rural policy zone.
- 7.2.8. The site is situated on land zoned '*Rural Policy Zone 1 Area under strong urban influence and of significant landscape*' under the applicable Development Plan, with Section 3.17.4 of this plan setting out the policy for rural housing in the open countryside. Indicating that all areas outside of the development boundary of settlements will be required to demonstrate to the Planning Authority with one of the criteria in the relevant Rural Policy Zone. This I note is consistent with Policy Objective HOU 41 set out above.
- 7.2.9. Table 3.4 of The Development Plan sets out the Local Need Qualifying Criteria in Rural Policy Zone 1.
- 7.2.10. The first criterion relates to persons engaged in full-time agriculture. This is not the appellants circumstance as presented in the documentation provided with this application as well as on appeal. Therefore, they do not qualify for a rural dwelling house under this criterion.
- 7.2.11. The second criterion relates to a son of daughter of a landowner who are seeking to build a first home for permanent occupation. The documentation provided with this application and on appeal in my opinion does not support that the appellant is the son or daughter of a landowner who exceeds the 1.5ha site area threshold for more than

15 years in relation to the appeal site. This is essentially the definition to be met for landowner under Section 3.17.4 of the Development Plan in this circumstance as part the qualifying criteria for a rural dwelling on Rural Policy Zone 1 land. Further, the documentation provided with the application and on appeal does not in my view support that the appellant has a demonstrable social or economic need as opposed to a desire to live in this highly sensitive to change rural area. Nor have they provided any evidence, such as in the form of an affidavit, to demonstrate that they have not previously owned a dwelling. Therefore, based on these considerations the appellant has not demonstrated compliance with this criterion.

7.2.12. In relation to the third criteria, based on the information provided by the appellant in their application and on appeal they are not a person who has an established business which is intrinsically reliant upon being located in Rural Policy Zone 1. Therefore they do not comply with this criterion.

7.2.13. In relation to the fourth criterion, based on the information provided by the appellant in their application and on appeal they are not a person who is required to live in the rural area of '*Rural Policy Zone 1*', for exceptional health reasons. Therefore, they do not comply with this criterion.

7.2.14. In relation to the fifth criterion, based on the information provided with this application and on appeal, the appellant does not have a demonstrable social ties to the area and are providing care for an elderly person(s) or a person(s) with a disability who lives in an isolated rural area and who does not have any able bodied person residing with them. Therefore they do not comply with this criterion.

7.2.15. In relation to the sixth criterion, based on the information provided by the appellant in their application and on appeal, the appellant is not a person who is in the circumstance of no longer in possession of a previously owned home with this having been disposed of following legal separation/divorce/repossession and have demonstrated a social or economic need for a new home in the rural area. Therefore, they do not comply with this criterion.

7.2.16. Based on an examination of the six criteria set out under Table 3.4 of the Development Plan which an applicant for a rural dwelling house on '*Rural Policy Zone 1*' land must demonstrate one of it is clear that the applicant does not meet any one of the six criteria. Therefore, to permit a proposed rural dwelling house for the applicant where

an applicant has not demonstrated a genuine rural based local need supported by robust evidence would be contrary to the local settlement strategy as provided for under the Development Plan. With the Development Plan local settlement strategy consistent with regional and national planning provisions and guidance on the matter of rural housing.

7.2.17. I also note to the Board that it is a policy objective of the Development Plan under HOU 36 to discourage urban generated housing in rural areas as well as direct such proposal to towns and settlements.

7.2.18. In addition, Policy Objective HOU 41 of the Development Plan sets out that the Planning Authority will seek to manage the development of rural housing in the open countryside by requiring applicants to demonstrate compliance with the local needs qualifying criteria relative to the rural policy zone, which in this case is Table 3.4.

7.2.19. For these reasons I concur with the Planning Authority's first given reason for refusal, and I consider in itself this particular issue is substantive reason in itself for the proposed development to be refused permission.

7.3. Visual Amenities and Backland Development

7.3.1. The second reason for refusal raises concern in relation to visual impacts of the development of this backland site for a rural dwelling house and considers, if permitted, would militate against the preservation of the rural environment, would set an undesirable precedent, would be contrary to Policy Objective HOU 47 and Section 13.9.6 of the Development Plan which relates to backland development. For these reasons the Planning Authority considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

7.3.2. I note that Policy Objective HOU 47 of the Development Plan requires that all housing comply with the criteria set out under Chapter 13 which sets out the Development Management Guidelines for housing in the open countryside.

7.3.3. As set out previously the site is located within '*Rural Policy Zone 1*' land which as part of this designation seeks to protect a landscape of recognised amenity value.

7.3.4. With Section 13.9.2 indicating that the site forms part of landscape number two: 'Carlingford Lough and Mountains'. Under Table 8.5 of the Development Plan the

importance of this distinct landscape character area has an 'international' rating in terms of importance.

- 7.3.5. Of further note, this appeal site is situated on the foothills of the Carlingford and Feede Mountains and the site occupies an elevated position above the R173 Omeath to Carlingford regional road.
- 7.3.6. As such the site forms part of a landscape setting that is afforded additional protection as an Area of High Scenic Quality under Table 13.7 of the Development Plan and under Table 13.6 of the Development Plan is one of two Areas of Outstanding Natural Beauty within the County. The Development Plan seeks to protect such areas from inappropriate development under Policy Objective NBG 36 and 37 which essentially seeks to protect such areas from inappropriate development for the benefit and enjoyment of current and future generations.
- 7.3.7. Added to this the proposed site is situated at a setback of c75m back from the R173, at an elevated point of the Carlingford and Feede Mountains foothills in proximity to the shoreline of Carlingford Lough. In between it and the R173 are two existing dwelling houses on lower ground levels with these properties alongside neighbouring properties fronting onto the R173 to the north and south occupying a staggered but coherent setback from this regional road.
- 7.3.8. In addition, there is a strong proliferation of one-off dwellings along this stretch of the R173 on both sides with the level of proliferation increasing the further northward one's journeys on this regional road to the outskirts of the coastal village settlement of Omeath. With this proliferation there is a wide variety of manmade built interventions that are highly visible within this scenic landscape as well as the insertion of non-native landscaping. Together these diminish the visual integrity and quality of this scenic landscape setting as appreciated from the public domain. Including the fact that these insertions are also highly visible from the lough and the opposite side of the Lough which is similarly mountainous with elevated views from the public domain.
- 7.3.9. In relation to backland sites, I note that this type of development is provided for under Section 13.9.6 of the Development Plan. With this section of the Development Plan stating: "*the Planning Authority will not generally favour proposals which involve development located to the rear of established buildings, located along a private lane off public roads and which introduce a piecemeal form of backland development*".

- 7.3.10. It further states that: *“this type of development results in a scattered arrangement of housing or clustered to the rear of existing properties and often long laneways to reach the properties. It is not respectful of the traditional settlement pattern, creates a built-up appearance thereby eroding the rural character and further fragmenting agricultural lands”*.
- 7.3.11. Moreover, it states that backland development will only be considered in Rural Policy Zones 1 where the applicant’s site has been owned by the family for at least 15 years. And the holding is at least 1.5ha and that the proposed dwelling must not have a negative impact on traffic safety.
- 7.3.12. As previously set out the applicant in this case, has not demonstrated that the site forms part of land owned by their family for at least 15 years and as discussed in following sections of this report the proposed development. Even when regard is had to the drawings submitted with this application which in my view fail to demonstrate in that the proposed dwelling would not have a negative impact on traffic safety of the R173 Protected Regional Route. Particularly at a point where maximum speed limits apply, where this regional route caters for a high volume of traffic, where there are no roadside verges, where there are multiple entrances and concerningly where the appellant is reliant upon an entrance where they have not robustly demonstrated that they can provide 215m required sightline distance in the Omeath and also the Carlingford direction from the private laneway that would serve their proposed development.
- 7.3.13. I therefore consider that the Planning Authority’s second reason for refusal is with merit in that the proposed development does not meet the circumstances where by backland development, a type of development that there is a general presumption against in the Development Plan, in rural locations may be considered.
- 7.3.14. It is also a concern that the visual amenities of this rural area have been significantly diminished by *ad hoc* and piecemeal one-off dwellings. Whilst the majority of these are positioned with frontage onto public roads this proposed dwelling seeks to position the dwelling on elevated land to the rear of existing dwellings at a setback from the public road with access served by a private restricted in width and substandard in sightlines onto the R173 regional road.

- 7.3.15. At such a positioning on this highly sensitive to change and landscape setting afforded robust protection from inappropriate development I consider that there is merit to the Planning Authority's concern. In saying that to permit the proposed development would not only militate against the preservation of this highly sensitive to change landscape, a landscape which has been significantly diminished by the cumulative impacts of such developments over recent two decades, but also it would add to the undesirable precedent of further less prevalent backland development particularly to the west of the R173.
- 7.3.16. Further, at such elevated locations on the foothills the visual impact of such developments arguably is more significant in terms of their diminishment of this landscape as these dwellings tend to seek to safeguard once in position open views over Carlingford Lough.
- 7.3.17. Moreover, in terms of the design of the proposed dwelling this is of little visual, architectural, or sensitive of place merit. Further, the palette of materials is not one that seeks to settle it or minimise its visual impact on its rural landscape setting. Arguably the proposed siting and design of the dwelling fails to have regard to the design guidelines provided by the Council for this type of development.
- 7.3.18. Furthermore, the landscaping is of limited merit, particularly in terms of providing robust screening from the public domain and Carlingford Lough.
- 7.3.19. Based on the above considerations I concur with the Planning Authority's second reason for refusal.

7.4. Access

- 7.4.1. The appellant as part of their appeal submission to the Board has submitted in a revised site layout plan purporting to demonstrate that 215m sightlines can be achieved in either direction from the private laneway to which they indicate they have a right of way over onto the R173. The R173 at the time of my site inspection was heavily trafficked in both directions.
- 7.4.2. I do not accept that this drawing is sufficiently robust in its own right to support that this development can achieve the above stated sightlines which I note are a requirement under Table 13.13 of the Development Plan based on the fact that they are not based on a professional survey of the adjoining stretch of the R173 for the required 215m on either of this access.

- 7.4.3. Alongside this drawing does not indicate ground levels of the road or actual details of any modifications proposed to overcome the present obstruction to achieving 215m sightline in either direction.
- 7.4.4. Further, the existing obstructions are outside of the applicant's legal interest to modify and as part of this application as well as part of the documentation provided with this appeal no robust evidence has been provided that the appellant has obtained the written consent of the legal owners to carry out any of the required modifications to achieve the sightlines required under Table 13.3 of the Development Plan. Or indeed that the title of the subject lands would be fettered to maintain these sightlines in future from being obstructed by maintenance or otherwise.
- 7.4.5. In addition, to permit the proposed development would be contrary to Policy MOV 56 of the Louth County Development Plan which I note states that the Planning Authority will seek: *"to safeguard the capacity and safety of the National and Regional Road network by restricting further access onto National Primary, National Secondary, and Protected Regional Roads, in accordance with the details set out in Tables 7.9 and 7.10"*.
- 7.4.6. In this case, I note that the restrictions and exemptions on Protected Regional Roads are set out under Table 7.10 and with the documentation provided with this application and on appeal supporting that the proposed development would be a type of development by way of it giving rise to an intensification of an existing access. Albeit the volume of traffic a four-bedroom dwelling would generate would be of a low volume.
- 7.4.7. The documentation provided with this application and on appeal also fails to support that the proposed development sought in this case would meet any of the exemptions set out in Table 7.10.
- 7.4.8. With these including but not limited to:
- Eliminating traffic hazard;
 - That the proposed development is one that is of national, regional or local importance with in such cases not creating a traffic hazard;
 - That the proposed development is not an extension to an authorised use and relates to the change of use of agricultural land for residential use;

- That the proposed development is nor related to a fixed natural resource of national or of regional importance; and, crucially
- That the dwelling is not for an applicant that has demonstrated that they satisfy the housing needs for persons under this exemption.

7.4.9. I also consider that the additional traffic the proposed development would generate on this substandard lane would give rise to additional road safety hazards for its users and in close proximity to the entrance of the field this lane contains a drainage pipe whose use, i.e., surface water and/or foul water drainage is unclear, notwithstanding, it is at a point and of a design where additional vehicular traffic over it could give rise to its structural failure.

7.4.10. Based on the above considerations I concur with the Planning Authority's third reason for refusal.

7.5. Residential Amenity

7.5.1. The fourth reason for refusal considers that the proposed development, if permitted, would give rise to adverse residential amenity impact on the properties adjoining it by reason of overlooking.

7.5.2. In relation to this reason for refusal I consider that the appellant in their appeal submission to the Board has not addressed this concern in a manner that shows that it can be overcome as part of the design proposal for the proposed development sought.

7.5.3. In relation to the details that are provided I consider that the boundary and landscaping scheme between the proposed dwelling are not sufficient to overcome the overlooking and overbearing impact the proposed dwelling house, albeit its single storey nature, would have on these properties given the significant changes in ground levels between them through to the lack of existing robust screening to safeguard the private amenity of these properties.

7.5.4. At present the cottage immediately adjoining the eastern boundary of the site benefits from some form of privacy to the rear with no significant overlooking arising from the property to the north due to the presence of robust screening and the use of the land for grazing of sheep. Whereas the property immediately served by the laneway does not benefit from any form of private residential open space amenity.

- 7.5.5. Further, the additional traffic and other forms of movement generated by the proposed dwelling would further diminish the poor standard of private amenity open space provision of this dwelling with the private amenity space of both properties served by the laneway being unobscured and open to view from this lane.
- 7.5.6. I therefore consider that the fourth reason given by the Planning Authority is with merit and I am of the view that conditions requiring boundary and landscaping improvements would not be sufficient to overcome this concern.

7.6. **Drainage**

- 7.6.1. The revised site characterisation form provided with the appeal submission appears to support that the proposed development would be able to comply with the requirements of EPA Code of Practice – Domestic Waste Water Treatment Systems, Population Equivalent ≤ 10 (2021).
- 7.6.2. Notwithstanding, I raise a concern with the proliferation of one-off dwellings in the immediate vicinity with this area being dependent upon proprietary bored wells and waste water treatment systems. There is a proliferation of one off dwellings within the immediate vicinity of the appeal site and I consider the addition another proprietary waste water treatment system given the general details provided on the area of the site including that the aquifer category is 'Poor'; the vulnerability is 'Extreme'; the groundwater protection response is R2¹, the site bounds a watercourse with this running downhill to a Carlingford Shore SAC (Site Code: 002306) which at its nearest point is c186m to the east of the site is not representative of sustainable development.
- 7.6.3. There was no evidence of a trial hole on site or evidence of a recently resurfaced area of ground where this was provided in the preparation of the Site Characterisation Assessment.
- 7.6.4. I also consider that there is still a question mark over the proposed development and its relationship with over one-off dwellings within its immediate vicinity in that the documentation provided does not clarify that a safe and sustainable source of potable water can be provided on this site to meet the future needs of occupants of the proposed development and that what is the juxtaposition between the percolation area and all bored wells within 100m of this infrastructure.
- 7.6.5. Moreover, the details provided on the manner in which surface water is to be provided is insufficient in terms of that this would be appropriately to the required standards

treated with this including the treatment of pollutants and other forms of contaminants, in particular those arising from the drive and parking area associated with the proposed dwelling house.

- 7.6.6. Together with this the conditions of the appeal site on the day of site inspection despite the dry spell proceeding was poor and there was evidence of water loving plants in the main area of the site, its perimeters through to at the entrance to the field in which the site is contained.
- 7.6.7. In addition, there was fast flowing water running in the adjoining watercourse running along the northern boundary of the site.
- 7.6.8. Notwithstanding these concerns, in my view there is sufficient other concerns arising from the proposed development sought under this application upon which to support its refusal.
- 7.6.9. I therefore consider should the Board be minded to refuse permission that there are sufficient other planning reasons upon which to base refusal of permission for the development sought under this application.

7.7. Appropriate Assessment

- 7.7.1. The requirements of Article 6(3) of the Habitats Directive, 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 assessment.
- 7.7.2. As set out previously in this report this appeal site lies c186m to west of Carlingford Shore SAC (Site Code: 002306), it is also located c380m to the north of Carlingford Lough SPA (Site Code: 004078) and there are a number of other European sites in the wider setting.
- 7.7.3. The Planning Authority, having regard to the information provided in particular to the provision of the waste water treatment system to serve the proposed dwelling considered that they could not be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Carlingford Shore SAC or Carlingford Lough SPA or any other European Site, in view of the site's Conservation Objectives.

- 7.7.4. It was therefore concluded that they were precluded from granting permission for the proposed development and this was the reason behind the sixth reason of refusal.
- 7.7.5. As discussed above, a revised Site Characterisation Form has now been provided with the appeal submission; however, there is still an absence of an ground and surface water drainage information in relation to the proposed development sought under this application given the sites proximity to a European Site, given the topography of the site and the presence of a watercourse discharging directly to Carlingford Shore SAC which as said previously in this report is located in close proximity to the east of the site.
- 7.7.6. I note that qualifying interests/special conservation interests of the Carlingford Shore SAC is 1) annual vegetation of drift lines [1210] and Perennial vegetation of stony banks [1220].
- 7.7.7. The documentation provided with this application and on appeal does not demonstrate in any robust manner that the proposed development would be unlikely not to have a significant effect individually, or in combination with other plans or projects, on this or any other European site, particularly by way of ground and surface water run off alongside given the hydrological link arising from the watercourse bounding the site and in such circumstances the effect this would have on these qualifying interests and the maintenance of this habitat and its associated species a favourable conservation condition at a national level.
- 7.7.8. It would have been appropriate that such an application was accompanied by an Appropriate Assessment Screening and, if deemed appropriate from the findings of this screening a Natura Impact Statement.
- 7.7.9. In this case I consider that the Planning Authority's sixth reason for refusal is with basis and that the Board are similarly precluded from granting permission for the proposed development sought under this application.

8.0 Recommendation

- 8.1. I recommend that permission be **refused**.

9.0 Reasons and Considerations

1. Having regard to:

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

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

The proposed development would result in a haphazard and unsustainable form of development in an un-serviced area, would contribute to the encroachment of random rural development in the area and would mitigate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to national policy, Ministerial Guidelines, the provisions of the Development Plan and to the proper planning and sustainable development of the area.

2. The site of the proposed development is located in an Area of High Scenic Quality and within Carlingford and Feede Mountains Area of Outstanding Natural Beauty as designated in the Louth County Development Plan, 2021-2027. It is stated policy objective under NBG 36 *“to protect the unspoiled natural environment of the Areas of Outstanding Natural Beauty (AONB) from inappropriate development and reinforce their character, distinctiveness and sense of place, for the benefit and enjoyment of current and future generations”* and policy objective NBG 37 *“to protect the unspoiled rural landscapes of the Areas of High Scenic Quality (AHSQ) from inappropriate development for the benefit and enjoyment of current and future generations”*. The proposed development, due to its backland location on an elevated site where there is a cluster of one-off dwellings overlooking Carlingford Lough and on the foothills of Carlingford and Feede Mountains would contribute to the encroachment of random rural development in this high amenity area, intensifying the suburban pattern of housing, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the stated objectives of the Louth County Development Plan 2021-2027 and to the proper planning and sustainable development of the area.

3. This proposal is contrary to Policy MOV 56 of the Louth County Development Plan, 2021 – 2027 as the application seeks to achieve access to a Protected Regional Route (R173) and the application has failed to demonstrate that they qualify for one of the exemptions for the creation of a new or intensification of an existing access as detailed in Table 7.10 of the Development Plan. The applicant has also failed to demonstrate that adequate visibility can be achieved at the junction with the public road as required under Table 13.13 of the Development Plan. As such the proposed development would conflict with the Louth County Development Plan, 2021-2027, and would endanger public safety by reason of a traffic hazard and obstruction of road users.

4. The proposed development, because of its elevated position relative to existing dwellings, would constitute inappropriate backland development which would seriously injure the amenities of property in the vicinity by reason of overlooking,

overbearing and uncoordinated piecemeal development. Accordingly, would be contrary to the proper planning and sustainable development of the area.

5. On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Carlingford Shore SAC or any other European Site, in view of the site's Conservation Objectives. In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

Patricia-Marie Young
Planning Inspector - 4th day of April, 2022.