



An
Bord
Pleanála

Inspector's Report

ABP-313168-22

Development	House & Garage with wastewater treatment system. A Natura Impact Statement (NIS) accompanied the application.
Location	Beefpark, Mountcharles, Donegal PO, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2152154
Applicant(s)	Aoife Dorrian.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Daniel A. Gallagher.
Observer(s)	None.
Date of Site Inspection	25 th July 2022.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 1.67 ha and is located in the townland of Beefpark, approx. 4.5km south-west of Donegal town and 1.5km south-east of Mountcharles. The site is located in a rural, coastal location and faces onto Donegal Bay to the south. It is accessed via a private access lane, which connects to the L1885. The lane is narrow in width and includes a bridge structure towards its south-western end.
- 1.2. The site is greenfield and is characterised by grassland, including in-field hedgerows and rushes. The topography of the area sees the land fall to the south, toward Donegal Bay. There is a noticeable southward slope within the site. At the time of my inspection, it was used for grazing.
- 1.3. There are 2 No. detached houses to the west and south-west, both of which are in excess of 70m from the proposed house and there is scattered rural housing elsewhere in the vicinity.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the construction of a house with sewerage treatment system and domestic garage, together with associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 3rd March 2022, subject to 13 No. conditions. The following conditions attached to the decision are noted: -
 - Condition No. 2 restricted occupation of the dwelling for a period of 7 years from first occupation.
 - Condition No. 3 required all upgrade works to the bridge/culvert at the junction with the L-1885-1 local to be completed prior to the commencement of development.

- Condition No. 4 required provision of visibility splays of 2.4m x 50m in both directions from the site access, measured to the nearside road edge.
- Condition No. 12 required all mitigation measures contained within the Natura Impact Statement to be implemented in full.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports dated 6th December 2021 and 22nd February 2022 have been provided. The first report identifies that permission was refused for a previous application at the site, by the Board. It states that the applicant has demonstrated compliance with the requirements of the development plan vis. rural housing need and that a house can be accommodated on the site. Foul drainage proposals are also stated to be acceptable, in view of land drainage works undertaken since the time of the previous refusal. Ongoing concerns are outlined regarding site ownership and the report recommends that additional information be sought regarding the applicant's legal title to enact the permission, if granted.

3.2.2. The second report followed receipt of the additional information response. It summarises AI response and recommends that permission be granted, subject to 13 No. conditions, which are consistent with the Planning Authority's decision to grant permission.

3.2.3. Other Technical Reports

An emailed **Roads Department** report dated 22nd November 2021 has been provided, which expresses no objection and which requests that the applicant should be conditioned to upgrade works to the bridge and the attachment of other standard conditions.

3.3. **Prescribed Bodies**

3.3.1. The Planning Authority reports indicate that Irish Water, the Office of Public Works and the Department of Housing, Local Government and Heritage were consulted on the application but did not make a submission.

3.4. Third Party Observations

3.4.1. A single letter of objection was received, the issues raised within which can be summarised as follows: -

- Permission was previously refused to the applicant and the underlying circumstances have not changed.
- Site ownership.
- Absence of right-of-way over private land to access the site and to provide services to the site.
- Absence of legal title to undertake improvement works to an existing bridge.
- Unsuitable site for drainage of effluent.
- Inadequate Natura Impact Statement.

4.0 Planning History

2050626 – ABP Ref. ABP-307730-20: Permission refused on 24th February 2021 for erection of a house with sewerage treatment system & domestic garage. The Board refused permission for 2 reasons as follow: -

1. *Having regard to the location of the site within a rural area which is clearly under urban influence, and to 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, it is considered that the applicant has not demonstrated an economic or social need to live in a rural area having regard to the viability of smaller towns and rural settlements and, therefore, the proposed development does not comply with National Policy Objective 19. The proposed development would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would contravene the provisions of the National*

Planning Framework. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. *It is considered that insufficient evidence of a demonstrable economic or social need to live in this rural area has been provided as required under the policy RH-P-3 of the Donegal County Development Plan 2018-2024. Thus, the proposed development would contribute to the encroachment of rural development in this 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.*

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

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

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

RH-P-1: It is a policy of the Council that the following requirements apply to all proposals for rural housing:

1. Proposals for individual dwellings shall be subject to the application of Best Practice in relation to the siting, location and design of rural housing as set out in Appendix 4 and shall comply with Policy RH-P-2;
2. Proposals for individual dwellings shall be sited and designed in a manner that enables the development to assimilate into the receiving landscape and that is sensitive to the integrity and character of rural areas as identified in Chapter 7 and Map 7.1.1 of this Plan. Proposals for individual dwellings shall also be located in such a manner so as not to adversely impact on Natura 2000 sites or other designated habitats of conservation importance, prospects or views including views covered by Policy NH-P-17.;

3. Any proposed dwelling, either by itself or cumulatively with other existing and/or approved development, shall not negatively impact on protected areas defined by the North Western International River Basin District plan;
4. Site access/egress shall be configured in a manner that does not constitute a hazard to road users or significantly scar the landscape, and shall have regard to Policy T-P15;
5. Any proposal for a new rural dwelling which does not connect to a public sewer or drain shall provide for the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health and accords with Environmental Protection Agency codes of practice;
6. Proposals for individual dwellings shall be subject to the flood risk management policies of this Plan.;
7. In the event of a grant of permission the Council will attach an Occupancy condition which may require the completion of a legal agreement under S47 of the Planning and Development Act 2000 (as amended).

RH-P-2: It is a policy of the Council to consider proposals for a new rural dwelling which meets a demonstrated need (see Policies RH-P-3–RH-P-6) provided the development is of an appropriate quality design, integrates successfully into the landscape, and does not cause a detrimental change to, or further erode the rural character of the area. In considering the acceptability of a proposal the Council will be guided by the following considerations:-

1. A proposed dwelling shall avoid the creation or expansion of a suburban pattern of development in the rural area;
2. A proposed dwelling shall not create or add to ribbon development (see definitions);
3. A proposed dwelling shall not result in a development which by its positioning, siting or location would be detrimental to the amenity of the area or of other rural dwellers or would constitute haphazard development;
4. A proposed dwelling will be unacceptable where it is prominent in the landscape; and shall have regard to Policy T-P-15;
5. A proposed new dwelling will be unacceptable where it fails to blend with the landform, existing trees or vegetation, buildings, slopes or other natural features which

can help its integration. Proposals for development involving extensive or significant excavation or infilling will not normally be favourably considered nor will proposals that result in the removal of trees or wooded areas beyond that necessary to accommodate the development. The extent of excavation that may be considered will depend upon the circumstances of the case, including the extent to which the development of the proposed site, including necessary site works, will blend in unobtrusively with its immediate and wider surroundings (as elaborated below).

RH-P-3: It is a policy of the Council to consider proposals from prospective applicants in need of housing within an area defined as Stronger Rural Area, provided they demonstrate that they can comply with all other relevant policies of this Plan, including RH-P-1 and RH-P-2, where the applicant can demonstrate that they comply with one or more of the following:

- Persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base, for example, those working in agriculture, forestry, horticulture etc.;
- Persons with a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the existence in the rural area of long established ties (7 years minimum) with immediate family members, or by reason of providing care to a person who is an existing resident (7 years minimum);
- Persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location.

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

RH-P-9: It is a policy of the Council to seek the highest standards of siting and architectural design for all new dwellings constructed within rural areas and the Council will require that all new rural dwellings are designed in accordance with the

principles set out in Appendix 4 of the County Development Plan, entitled 'Building a House in Rural Donegal – A Location, Siting and Design Guide'.

5.1.3. According to Map 7.1.1 'Scenic Amenity' the site is located partly within an area of 'High Scenic Amenity' and partly within an area of 'Especially High Scenic Amenity'. Section 7.1.1 of the development plan discusses landscape designations. For areas of High Scenic Amenity states that these areas '*are landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.*' For areas of Especially High Scenic Amenity it states that the areas '*are sublime natural landscapes of the highest quality that are synonymous with the identity of County Donegal. These areas have extremely limited capacity to assimilate additional development.*'

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

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

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

5.2. National Planning Policy Framework

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

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

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

5.3. Sustainable Rural Housing Guidelines for Planning Authorities

- 5.3.1. The Guidelines identify a number of rural area typologies and accompanying Map 1 provides an indicative outline of these area typologies. According to this indicative map, the subject site is in a ‘stronger rural area’. It is noted from the Guidelines that this map is an indicative guide to the rural area types only and that the development plan process should be used to identify different types of rural area.
- 5.3.2. For stronger rural areas, the Guidelines outline that the development plan should strike an appropriate balance between development activity in smaller towns and villages and wider rural areas. The development plan should aim to strike a reasonable balance between: (1) Accommodating proposals for individual houses in rural areas subject to good practice in relation to matters such as siting and design as outlined elsewhere in these guidelines, (2) Actively stimulating and facilitating new housing development in smaller towns and villages to provide for balanced urban and rural choices in the new housing market and (3) Carefully monitoring development trends to avoid areas becoming overdeveloped in terms of leading, for example, to extensive ribbon development.
- 5.3.3. The Guidelines require a distinction to be made between urban and rural generated housing needs, in the different rural area types. In relation to the identification of people with rural generated housing needs, the Guidelines refer to ‘Persons who are an intrinsic part of the rural community’ and ‘Persons working full-time or part-time in rural areas. Of relevance to this appeal, ‘Persons who are an intrinsic part of the rural

community' are identified as having "*spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes.*"

5.4. Natural Heritage Designations

- 5.4.1. The subject site is not located within any designated European site. Donegal Bay (Murvagh) SAC (Site Code 000133) encroaches to the south site boundary and Donegal Bay SPA (Site Code 004151) lies slightly further south, within c.20m of the site 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 the construction of a house with sewerage treatment system and domestic garage, together with associated site works, on a rural site of 1.67ha. 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, which does not require specialist construction methods, it is considered that there is no real likelihood of significant effects on the environment. 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

- Site planning history
 - The applicant has previously applied for permission on this site (Reg. Refs. 19/50556 and 20/50626 refer) and been refused (ABP-307730-20 refers)
 - The current proposed development is identical to the two previous applications and the underlying planning facts have not changed.
 - The development is contrary to NPO19 of the NPF
 - No economic or social need to live in the area has been demonstrated.
- Rural housing need
 - The applicant only relies on a letter from Cllr Michael Naughton and a letter from St. Peter's National School. Similar letters provided as part of a previous proposal were determined by the Board to be insufficient in determining a rural housing need and no new evidence has been provided as part of this application.
 - The applicant has never lived in the area so Policy RH-P-3 cannot be satisfied.
- Site ownership
 - Ownership of the site was questioned in submissions on previous applications and statements within the current application regarding ownership of the site are again contested.
 - The Planning Authority did not adequately determine ownership of the site in its assessment of the application.
 - Reference is made to assessment of this aspect of the development by the previous Inspector.
- Access to the site

- The appellant owns over 90% of the laneway which the applicant proposes to use for access. There is no right-of-way over this private land for such access and no such consent is provided.
- The applicant has no right to carry out works to a bridge that the appellant owns and such consent will not be provided. The risk to road users arising from the condition of the bridge was an issue for the Planning Authority and gave rise to the applicant providing an undertaking to carry out improvements to it. In the absence of any ability to undertake such improvements, the risk to road users will remain.
- It is unclear how services are proposed to be brought to the site, but some require access to the appellant's lands and consent has not been granted for same..
- The 50m required sightlines cannot be provided without substantial works to third-party lands.
- Wastewater treatment
 - The previous ABP Inspector identified that the site is unsuitable for effective on-site treatment of wastewater.
 - On-site testing as part of this application was undertaken in June 2021, during a period which is not representative of normal weather conditions in the area. The findings of previous testing and the Inspector's stated concerns have not been adequately addressed.
- Appropriate assessment
 - The findings of the previous NIS were disputed by the previous Inspector and no new or sufficient evidence has been provided to undermine this.

6.2. Applicant Response

- 6.2.1. A submission was received on 26th April 2022, submitted on behalf of the applicant by Harley Newman Planning Consultants. The contents of the submission can be summarised as follows: -

- Issues raised by the appellant regarding land ownership, right of way and access and right to carry out works have been considered by the Board previously. The salient issue is compliance with local and national rural housing policy.
- Following the Board's previous refusal, the applicant has provided additional information to substantiate ties to the local area and compliance with policy RH-P-3. This was accepted by the Planning Authority, which granted permission.
- The applicant has also advanced an urgent economic and social need to build a house and this was accepted by the Planning Authority.
- Proposed siting and integration with the site are acceptable.
- The applicant has demonstrated legal title to make the application and complete the development.
- The requirement for remedial works to the bridge on the access road were outlined as part of the previously refused application. The applicant has legal title to undertake the works.
- The applicant has undertaken drainage improvement works on the site, to divert unnecessary surface water from the site and to lower the water table on the site, from 1.5m to 1.95m. This has improved P and T-test results.
- An updated NIS was submitted with the application, which arises from the new site assessment and which concludes that the development will not impact on an adjacent European site.

6.3. Planning Authority Response

6.3.1. A submission was received on 25th April 2022, the contents of which can be summarised as follows: -

- The applicant has complied with the requirements of development plan policy RH-P-3 by providing documentary evidence of their ties to the local area.
- The applicant has satisfactorily demonstrated their interest in the site.
- Matters raised within the appeal were addressed as part of the Planning Authority's assessment of the application.

6.4. Observations

6.4.1. None.

6.5. Prescribed Bodies

6.5.1. The appeal was circulated to An Taisce, The Heritage Council and the Department of Housing, Local Government and Heritage (Development Applications Unit) but no responding submissions were received.

7.0 Assessment

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

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

7.2. Legal Title

7.2.1. The appellant has raised a number of issues regarding ownership of the site and the right to access it from a private lane which he asserts ownership over. In particular he questions the applicant's ability to make the application, in view of ownership uncertainty, that there is no right-of-way entitlement to use the private lane to access the site and that there is no right or entitlement to undertake improvements to the lane that the applicant has proposed to undertake or to use it for the provision of services to facilitate the development.

7.2.2. With reference to the applicant's ability to make the application, Question 10 on the application form states that the applicant's mother is the legal owner and a letter of consent to the making of the application was provided by Mary Dorrian. Following a request for additional information from the Planning Authority, a letter from F.

Gallagher & Co. Solicitors was provided, which states that under the terms of the Will of the registered owner, Mr. Hugh Harley, Mary Dorrian is entitled to become registered as owner of the property within Folio DL10732 at Beefpark, Mountcharles and that Mary Dorrian is entitled to consent to an application for permission on the land. No Folio map was provided with this letter but I have confirmed from the Land Registry website¹ that it includes the main part of the application site, where the proposed house is located. The access lane from the L1885 is not within the folio.

- 7.2.3. Site ownership was considered in detail by the previous Inspector on appeal Ref. ABP-307730-20, who noted that at that time the land was in the process of being transferred to Mary Dorrian. I note that the F. Gallagher & Co. Solicitors letter provided on this application does not confirm that Mary Dorrian is actually the registered owner, merely that she is entitled to be registered. It thus appears that the land remains in the process of being transferred.
- 7.2.4. The previous Inspector recommended that permission should be refused on the basis that the applicant had not demonstrated sufficient legal interest in the site but the Board did not include this as a refusal reason in its Order. From the information available to me, I remain unclear on the site's ownership. In view of the passage of time since its previous decision on this site and the ongoing uncertain nature of ownership of the site, the Board may wish to clarify its current registered owner.
- 7.2.5. With reference to the applicant's entitlement to use the lane for the purposes of access and to undertake works to it as part of the development, similar issues were raised as part of the previous appeal, Ref. ABP-307730-20, and were discussed at length by the Inspector. There is clearly ongoing disagreement between the parties regarding the right to use the lane for the purposes of access and to undertake works as part of the proposed development This has included the submission of legal correspondence on the matter.
- 7.2.6. Section 5.13 of the *Development Management Guidelines* (DOEHLG, 2007) provides detailed guidance on the issue of land ownership disputes within planning applications, outlining that the planning system is not appropriate for resolving land disputes and that these are ultimately matters for the Courts. Further, it is advised

¹ <https://www.landdirect.ie/pramap/>

that permission should only be refused on the basis of land ownership, where it is clear that the applicant does not have sufficient legal title.

7.2.7. The issue at hand is not the existence of a right-of-way, it is the precise entitlements that are conferred to beneficiaries of the right-of-way. It is my view that this appeal is not the appropriate forum for determination on the matter; this is a matter for the Courts. It is not clear from the information before me that the applicant does not have sufficient legal title to use the lane or to undertake works and it would thus be unjustified to refuse permission on this basis.

7.3. Compliance with the Rural Housing Strategy

7.3.1. The subject site is located in the townland of Beefpark, c.1.5km east of Mountcharles and c.4.5km south-west of Donegal Town. It is in an area designated by the development plan as a 'stronger rural area'. Development plan policy RH-P-3 is the applicable rural housing policy in stronger rural areas and it requires applicants to comply with one or more of the following criteria: -

- Persons whose primary employment is in a rural-based activity with a demonstrated genuine need to live in the locality of that employment base, for example, those working in agriculture, forestry, horticulture etc.;
- Persons with a vital link to the rural area by reason of having lived in this community for a substantial period of their lives (7 years minimum), or by the existence in the rural area of long established ties (7 years minimum) with immediate family members, or by reason of providing care to a person who is an existing resident (7 years minimum);
- Persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location.

7.3.2. National Policy Objective (NPO) 19 of the National Planning Framework is also pertinent to the appeal and it states that in areas under urban influence the provision of single housing in the countryside should be facilitated based on the core consideration of demonstrable economic or social need to live in the rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

- 7.3.3. A supplementary rural housing form was provided as part of the application, indicating that the applicant classifies themselves as being a person with a vital link to the rural area, having lived there for a period of at least 7 years, and also by reason of an immediate family member having lived in the area for a period of at least 7 years. In support of the case, the applicant states that her mother and grandmother are originally from Eddrim Glebe, Mountcharles and that her mother attended St. Peter's National School and remained in the area for sixteen years before relocating after marriage. A letter of support from a County Councillor and a letter from St. Peter's National School have been provided with the application. The applicant states that their current address is Laghey, Co. Donegal and that they have lived at this address for in excess of 7 years.
- 7.3.4. The previous Inspector on appeal Ref. ABP-307730-20 expressed concern that the applicant had not demonstrated a genuine need to live in this rural area and did not comply with policy RH-P-3 of the development plan. Having considered the information provided with the application and appeal, I share these concerns.
- 7.3.5. The applicant states that they currently live in Laghey, which is c.13km from the site. Evidence has been provided that the applicant's mother attended school in Mountcharles, but this was over 50 years ago and it is stated that she has lived in Laghey for the majority of the intervening period.
- 7.3.6. The thrust of policy RH-P-3 indeed NPO19 of the NPF is that applicants must have a functional connection to the rural area and a demonstrable economic or social need to live in the area. From the information provided, I do not consider the applicant has demonstrated any current and ongoing functional connection to the area and thus has not demonstrated compliance with the aforementioned policies. I would also advise the Board that I do not consider a family connection to the area is sufficient to require a house in a rural area that is under urban influence.
- 7.3.7. Donegal Town, which is c.4.5km from the site is identified by the development plan as a growth centre and it is allocated a proportion of planned housing growth over the plan period. It has an important role in the development of the county, providing important retail, residential, service and amenity functions for the town's urban population and rural hinterland. From my observations on site, the area surrounding the subject site displays pressure for rural housing and, in my view, the development

of further housing without adequate justification serves to undermine the role of Donegal Town and may jeopardise its ability to act as a driver of population and economic growth.

- 7.3.8. In conclusion, I consider that no functional connection to the rural area and no demonstrable economic or social need to live in the rural area have been demonstrated. To permit the development would therefore contravene local and national policy in relation to rural housing and I consider permission should be refused on this basis.

7.4. **Design, Layout and Residential Amenity**

Proposed house

- 7.4.1. The proposed design and layout remain as per the previously refused proposal and, in my view, continue to be acceptable. The proposed breaking up of the building form, which is part single-storey and part 2-storey in height, and which includes large glazing elements across the front elevation, serve to reduce its visual prominence. Landscaping proposals will also help the development assimilate into the local landscape.
- 7.4.2. The proposed internal layout of the house exceeds the minimum recommendations of the *Quality Housing for Sustainable Communities* (2007) guidelines, as referenced by the development plan.

Neighbouring houses

- 7.4.3. There are existing houses to the west and south-west, both of which are in excess of 70m from the proposed house. Issues of overlooking, overbearing and overshadowing do not arise in view of this level of separation.

7.5. **Access**

- 7.5.1. Access is proposed to be taken from a private access lane that leads from the L1885 and which terminates at the site access.
- 7.5.2. The Planning Authority's Roads Department did not object to the development but requested that the applicant should be conditioned to carry out works to a bridge located on the lane access, in line with proposals forming part of the application. The site layout drawing identifies that a safety upstand will be provided along the road edge and that a railing will also be provided.

- 7.5.3. The appellant questions the applicant's ability to use the lane for the purposes of access and to undertake improvement works as part of the development. I have addressed this issue elsewhere in my report and have advised the Board of my view, that this appeal is not the appropriate forum for determination on the matter and that this is a matter for the Courts.
- 7.5.4. Notwithstanding this issue, the lane experiences low traffic levels and I am satisfied that it can accommodate the development. The upgrade works proposed by the applicant appear to relate to pedestrian safety and do not relate to any deficiency in road condition.
- 7.5.5. Visibility at the junction of the private access lane and the L1885 is impeded by vegetation on third party lands. Notwithstanding this, the L1885 experiences low traffic levels in this area and terminates in this area, providing only right-of-way access to the beach further south of the junction. The junction is an existing arrangement and, in my view, it does not give rise to any traffic hazard. I thus conclude that it would be unjustified to refuse permission on this basis. I note in reaching this conclusion that the Planning Authority's Roads Department did not object to the development.

7.6. **Drainage**

Foul Drainage

- 7.6.1. The development includes the provision of a packaged treatment plant and polishing filter. The Site Suitability Assessment Report submitted with the application states that site does not have the characteristics or scope to accommodate a conventional septic tank system and proposes a packaged treatment system with associated tertiary wastewater treatment unit as the most suitable option. It also recommends that provision should be made for new land drains upgradient of the house and percolation system, to protect the area from surface water run-off from higher ground.
- 7.6.2. The site layout drawing identifies that the wastewater treatment system and a 49qm polishing filter will be located south of the proposed house and also identifies a series of land drains, to the north, east and south of the house, which would all ultimately drain to an interceptor prior to discharge from the site.

- 7.6.3. The Site Suitability Assessment Report identifies the category of aquifer as 'locally important', with a vulnerability classification of 'moderate'. Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice Domestic Wastewater Treatment Systems identifies an 'R1' response category i.e., acceptable subject to normal good practice.
- 7.6.4. The Site Characterisation Form utilised for the assessment is that from the 2009 Code of Practice, which was superseded by a new Code of Practice published in March 2021. Notwithstanding this, I note that a trial hole with a depth of 2.4m recorded 1600mm of gravelly silt/clay with silt / peat-like material and 300mm of grey/blue daub. The water table was encountered at 1.9m (A supporting letter provided by Septech Wastewater Services states that drainage improvement works have been undertaken at the site, which have had the effect of lowering the water table from 1.5m as was encountered for the previously refused development). Bedrock was encountered at the base of the trial hole. In relation to the percolation characteristics of the soil, a sub-surface percolation test result (identified by the assessment as the T-test) of 50.86min/25mm was returned. A surface percolation test result (identified by the assessment as the P-test) of 47.92min/25mm was returned.
- 7.6.5. The updated site assessment indicates that the water table on the site has been lowered, by 400mm, and the surface percolation tests indicate there is an increased rate of percolation from the site. Having regard to the site percolation test results, I consider it has been demonstrated that the site can accommodate a wastewater treatment system. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the detailed specification of the on-site wastewater treatment system with the Planning Authority.

Surface water drainage

- 7.6.6. Surface water is identified on the site layout drawing as draining to a silt/oil/petrol interceptor adjacent to the south/east site boundary, prior to discharge to a field drain. The site layout drawing identifies that a series of land drains will be provided, to the north, east and west of the house, all of which would drain to the interceptor.
- 7.6.7. The extent of surface water to be collected within the silt/oil/petrol interceptor is not stated. Should the Board decide to grant permission, I recommend that a condition be attached requiring the applicant to agree the specification and size of the proposed

interceptor, including demonstration of its adequacy to accommodate all run-off from the site.

7.7. **Appropriate Assessment**

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

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

Background on the Application

- 7.7.2. A Natura Impact Statement was submitted with the application, prepared by Earthy Matters Environmental Consultants. It provides a description of the proposed development, identifies European sites within a possible zone of influence and identifies potential impacts in relation to Donegal Bay (Murvagh) SAC and Donegal Bay SPA.

Screening for Appropriate Assessment- Test of likely significant effects

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

Brief description of the development

The development is described at Section 2 of this Report. In summary, permission is sought for construction of a house with sewerage treatment system and domestic garage, together with associated site works on a site with a stated area of 1.67ha. Foul drainage is proposed to drain to a packaged wastewater treatment plant and surface water is proposed to drain to an interceptor, prior to discharge to a field drain to the south of the site. A Natura Impact Statement was submitted with the application.

7.7.5. 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:

- Loss of potentially suitable ex-situ habitat for or disturbance of Species of Conservation Interest within a European site.
- Impact on water quality within a European site arising from surface water discharges from the site containing suspended solids and/or pollutants.
- Impact on water quality within a European site arising from the treatment of effluent on the site.

Submissions and Observations

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

European Sites

7.7.7. The subject site fronts directly onto Donegal Bay to the south and is adjacent to Donegal Bay (Murvagh) Special Area of Conservation (Site Code 000133) and Donegal Bay Special Protection Area (Site Code 004151).

7.7.8. There are other European sites within a 15km search zone, but these sites are more than 10km from the site and in view of the small scale of the proposal I am happy that there is no possibility of significant effects arising from the proposed development. My assessment is therefore focused on those sites in the immediate vicinity of the subject site.

7.7.9. The table below provides summaries of Donegal Bay (Murvagh) SAC and Donegal Bay SPA.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor)
<u>SAC</u>			
Donegal Bay (Murvagh) Special Area of	• Mudflats and sandflats not covered by seawater at low tide,	Adjacent to site boundary	Connection via surface water/drain

Conservation (Site Code 000133)	<ul style="list-style-type: none"> • Fixed coastal dunes with herbaceous vegetation, • Dunes with <i>Salix repens</i> ssp. <i>Argentea</i>, • Humid dune slacks, • <i>Phoca vitulina</i> 		
<u>SPA</u>			
Donegal Bay Special Protection Area (Site Code 004151)	Great Northern Diver, Light-bellied Brent Goose, Common Scoter, Sanderling, Wetland and Waterbirds	Adjacent to site boundary	Connection via surface water/drain

7.7.10. In respect of Screening, the Natura Impact Statement concludes: -

'It has been shown that of the European sites identified within the 15km radius, the proposed development has the potential to impact on Donegal Bay (Murvagh) SAC (00133) AND Donegal Bay SPA (4151). In accordance with Article 6(3) of the Habitats Directive, it is recommended that a full Appropriate Assessment Stage 2 be carried out in order to further examine the risk of the project development to the conservation interest of the identified designated conservation site.'

Loss of potentially suitable ex-situ habitat for or disturbance of Species of Conservation Interest within a European site

7.7.11. Regarding loss of potentially suitable ex-situ habitat, Donegal Bay is primarily designated for a variety of wetland birds. The subject site does not contain suitable habitat for SCI, so there is no potential for loss of suitable ex-situ habitat. Light-Bellied Brent Goose are known to forage on maintained grassland. The subject site contains rough grassland and is thus unlikely to be suitable. In any case, there are extensive other farmlands in the area that would provide similar usability to the subject site so the loss of this site is unlikely to have a significant effect on this SCI.

7.7.12. The risk of significant effects can therefore be excluded at this stage.

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

- 7.7.13. In view of the very close proximity of both European sites to the site boundary and the southward sloping nature of the site, there is a risk of run-off during construction being discharged to surface waters within both European sites.
- 7.7.14. There is also a risk of run-off containing suspended solids or pollutants during the operational phase, where surface waters are proposed to drain to a single point within the site, for discharge to a field drain that lies within the European sites.
- 7.7.15. In view of the above, I consider the risk of significant effects cannot be ruled out at this stage.

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

- 7.7.16. Effluent is proposed to be treated within a tertiary treatment plant and polishing filter, prior to discharge to groundwater. The Screening assessment within the NIS identifies that pollution and eutrophication of groundwater, with reference to increased phosphorous, nitrate and higher electricity conductivity levels may affect aquatic species and fisheries.
- 7.7.17. The EPA Code of Practice for domestic wastewater treatment systems does not specify a minimum setback from heritage features such as SPA or SAC sites but, for example, states that it should be set back a minimum of 50m from a lake or foreshore. In this instance the system is set back from the closest European site by 82m.
- 7.7.18. A site characterisation report has been provided, which confirms that the site is suitable for installation of a packaged wastewater treatment system. The proposed tertiary treatment system will provide a higher level of treatment, leading to improved groundwater discharge quality from the site, over and above what is required. Where site-specific testing has shown the site to be suitable for the treatment of foul waste via a septic tank system and, given the separation distance between the site and the European sites, I am satisfied that the potential for likely significant effects on qualifying interests within the SAC and SPA can be excluded.

In-Combination Effects

- 7.7.19. The subject site is a rural area, where there is scattered housing in the immediate vicinity. Cumulative effects arising from surface water run-off may give rise to

significant effects, in view of the very close proximity of the European sites to the houses. The potential for significant in-combination effects therefore cannot be excluded at this stage.

Screening Determination

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

- Donegal Bay (Murvagh) Special Area of Conservation (Site Code 000133)
- Donegal Bay Special Protection Area (Site Code 004151)

Stage 2 Appropriate Assessment

7.7.21. The NIS examines and assesses potential adverse effects of the proposed development on Donegal Bay SPA and Donegal Bay (Murvagh) SAC. Section 1.2 of the NIS, Methodology, outlines that the assessment is based desk-top assessment and a walk-over site survey, undertaken on 1st December 2019.

7.7.22. Regarding the SAC, the NIS provides an assessment against each of the conservation objectives and identifies the potential for indirect effects on the 'mudflats and sandflats not covered by seawater at low tide' habitat, via hydrological pathways from the site. Potential impacts are associated with potential discharges containing suspended solids or pollutants (during construction and operational phases) and treatment of effluent on site and subsequent discharges to ground water. Mitigation is proposed to ensure potential effects do not arise. For the construction phase, it is proposed that sediment screens be erected at appropriate locations, to control run-off content. For surface water drainage, the proposed system involves all run-off being piped and drained to an interceptor, prior to discharge to a field drain. The WWTP is a tertiary system, which is stated to go beyond the requirements of the EPA Code of Practice. The planting of a low-level tree belt is also proposed, as an additional buffer and a means of absorbing potential nutrients coming from the site.

- 7.7.23. The 'fixed coastal dunes with herbaceous vegetation' and 'humid dune slacks' are stated to be remote from the development and will thus be unaffected by it. Harbour Seal are stated to be principally located in the inner waters of Donegal Bay, more than 2km from the site, and are predicted to be unaffected by the development.
- 7.7.24. Regarding the SPA, the NIS similarly provides an assessment against conservation objectives. It identifies that the closest surveyed area to the site indicates a low range of bird records, with the closest surveyed bird presence in relation to the site were Light-Bellied Brent Geese roosting sites, 150-300m from the site. The main threat to the area of the SPA is stated to be disturbance from walkers and their dogs.
- 7.7.25. Disturbance during construction is identified as a risk associated with the development, which requires mitigation. To mitigate, it is proposed that construction will take place outside the winter/breeding season and that hooded lights should be incorporated, which face away from the bay.

7.7.26. The NIS concludes: -

'...with the mitigation measures set out in this report, there would be no significant adverse effects on the integrity of any European sites, as a result of the proposed development.'

Appropriate Assessment of Implications of Proposed Development

7.7.27. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European site using the best scientific knowledge in the field. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

European Sites

- 7.7.28. The relevant European site for Stage 2 Appropriate Assessment are Donegal Bay (Murvagh) SAC and Donegal Bay SPA. This Stage 2 assessment will consider whether or not the project would adversely affect the integrity of this European site, either individually or in combination with other plans and projects in view of the site's conservation objectives.
- 7.7.29. The main aspects of the development that could adversely affect the conservation objectives of European sites relate to: -

- 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.

Evaluation of Effects

7.7.30. Regarding the risk of run-off containing suspended solids or pollutants entering the European sites during construction, the main construction site is c.90m from the SAC and there is intervening landcover that will act as a buffer for run-off. Run-off during construction is likely to be contained within the site, given its size and the distance to the south site boundary. Notwithstanding this, taking a precautionary approach and in view of the sloped nature of the site, I agree with the NIS that a sediment barrier/silt fence should be erected in a location south of the proposed drainage works, to intercept and contain run-off during construction.

7.7.31. Run-off for the operational phase is proposed to drain via a number of piped channels, to a Kingspan Klargester interceptor near the south-west corner of the site. I note from the site layout drawing that a series of land drains are proposed across the site, including a drain that runs in an east-west direction and which is south of the development area. I am satisfied that this system will result in collection and treatment of all potentially pollutant run-off from the site, ensuring that such content is removed prior to discharge. The NIS states that the impermeable area is 832m², which is small proportion of the overall site area. The NIS does not state the capacity of the interceptor unit; however, I am aware from the product specification that there are a number of Klargester units of adequate capacity to serve the development (unit sizes cater for run-off from impermeable areas between 170-15,833m²). Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to confirm the specification of the proposed interceptor unit.

In-combination effects

7.7.32. I have previously identified that cumulative impacts from surface water discharges from housing in the immediate area may give rise to in-combination significant effects at the European sites. Subject to implementation of the proposed mitigation, I am satisfied that the development will not give rise to the release of suspended solid

or pollutant content as part of surface water discharges. In-combination effects will therefore not arise.

Integrity Test

- 7.7.33. Following the appropriate assessment and the consideration of mitigation measures, I am able to ascertain beyond reasonable scientific doubt that the project would not adversely affect the integrity of Donegal Bay (Murvagh) Special Area of Conservation (Site Code 000133) and Donegal Bay Special Protection Area (Site Code 004151), in view of the Conservation Objectives for both sites. This conclusion has been based on a complete assessment of all implications of the project alone and in combination with plans and projects.

Appropriate Assessment Conclusion

- 7.7.34. 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. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Donegal Bay (Murvagh) Special Area of Conservation (Site Code 000133) and Donegal Bay Special Protection Area (Site Code 004151). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of this site, in light of its conservation objectives.
- 7.7.35. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects, would not adversely affect the integrity of the European site, or any other European site, in view of its conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed development.

8.0 Recommendation

- 8.1. I recommend that permission be refused for the following reasons and considerations set out hereunder.

9.0 Reasons and Considerations

Having regard to:

- The location of the site within a stronger rural area, as identified by the Donegal County Development Plan 2018-2024,
- The provisions of the Donegal County Development Plan 2013-2019, RH-P-3 of which states that in stronger rural areas, applicants are required to comply with specified criteria regarding persons who are deemed to have a rural housing need,
- National Policy Objective 19 of the National Planning Framework which, for rural areas under urban influence seeks to facilitate rural housing proposals based on the core consideration of demonstrable economic or social need to live in the 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, and
- The documentation on file provided as part of the application and appeal

The Board considers that the applicant has failed to demonstrate an economic or social need to live in the rural area. 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.

Barry O'Donnell
Planning Inspector

9th September 2022.