



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313793-22

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<b>Development</b>	Construction of a dwelling house and domestic garage with connection to proposed septic tank and percolation area.
<b>Location</b>	Clonblosk, Upper Ballymagan, Buncrana, Co. Donegal.
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	2152060
<b>Applicant(s)</b>	Karl McGee and Roisin Henderson.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	6 <sup>th</sup> December 2022.
<b>Inspector</b>	Barry O'Donnell

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.51ha and is located at Clonblosk, east of Buncrana in County Donegal. The site is accessed from the L-7091, a county road that routes eastward from the centre of Buncrana, to the L-7081.
- 1.2. The site is in a rural area and comprises of improved grassland that was used for sheep grazing at the time of my inspection. It is bounded by a low-level hedge along the north boundary, by leylandii trees along the west boundary and by a post and wire fence along the south and east boundaries.
- 1.3. The topography of the area sees land levels falling from north to south and the site falls from a high-point of 133m AOD at the north-east corner, to a low-point of 121.1m at the south-east corner.
- 1.4. The area contains scattered housing, including to the on east and west-adjoining sites. Housing development on the L-7091 is concentrated further to the west, in closer proximity to the town centre. The area where the site is located has a rural character.

## 2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the construction of a dwelling house and domestic garage, together with a septic tank and percolation area.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority refused permission on 19<sup>th</sup> May 2022, for 1 No. reason as follows: -

*The applicants have failed to demonstrate that they qualify with Policy BC-H-P-4 of part(c) of the County Donegal Development Plan 2018-2024 (as varied), in that no evidence has been provided that he or his parents have resided within any part of Buncrana zoned "Agricultural/Rural" for a period of at least seven years and thus to*

*permit the proposed development would materially contravene Policy BC-H-P-4 be contrary to the proper planning and sustainable development of the area.*

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

- 3.2.1. Planning Reports dated 24<sup>th</sup> November 2021, 23<sup>rd</sup> February 2022 and 19<sup>th</sup> May 2022 have been provided. The first report expresses concern regarding compliance with housing policies contained within the development plan and recommends additional information be sought in this regard. The proposed scale and design of the house are stated to be acceptable, as are proposed sightlines from the site access.
- 3.2.2. The second report followed receipt of the AI response. It summarises and responds to the AI response submission and recommends that Clarification of AI be requested, in relation to a map which identifies the location of the applicant's parents' home.
- 3.2.3. The third report followed receipt of the CAI response. It summarises and responds to the CAI response submission and recommends that permission be refused for 1 No. reason, which is consistent with the Planning Authority's decision on the application.
- 3.2.4. Other Technical Reports

A **Roads Department** report dated 15<sup>th</sup> November 2021 has been provided, which recommends a request for additional information in relation to: -

- proposed sightlines,
- the extent and location of services and infrastructure within the site,
- Site drainage, and
- Traffic levels and road conditions.

### 3.3. **Prescribed Bodies**

- 3.3.1. Irish Water made a submission dated 18<sup>th</sup> October 2021, recommending standard conditions in the event of a grant of permission

### 3.4. **Third Party Observations**

- 3.4.1. None received.

## 4.0 Planning History

- 4.1. I did not encounter any recent planning records pertaining to the site. There are extensive planning records in the surrounding area, primarily related to the development of rural housing.

## 5.0 Policy Context

### 5.1. Donegal County Development Plan 2018-2024

- 5.1.1. Map 13.1A 'Buncrana Land Use Zoning' identifies that the site is zoned for 'Agricultural / Rural' purposes. The associated objective for this zoning states '*To provide for a spatial development pattern that is sustainable and related in form and scale to the level of existing physical and social infrastructure in the area and that can be integrated and absorbed into the landscape.*'
- 5.1.2. Chapter 2A of the development plan contains the Core Strategy. Buncrana is identified as a 'Level 2a' town, one of eight Level 2a towns that are identified due to their existing population base, their infrastructural capacity to accommodate reasonable levels of new housing and their role as key service centres at the sub-county level. In accordance with its designation, Buncrana is allocated a portion of planned housing growth over the lifetime of the development plan.
- 5.1.3. Relevant policies include: -
- CS-P-2:** It is the policy of the Council that proposals for development in Buncrana and Bundoran shall be considered in the light of all relevant material planning considerations, relevant policies of the County Development Plan including Part C Chapters 12 and 13, 'Objectives and Policies of Buncrana' and 'Objectives and Policies of Bundoran' and other regional and national guidance/policy, relevant environmental designations and particularly Map 13.1A (Buncrana Land Use Zoning) and Map 14.1 (Bundoran Land Use Zoning).
- BC-H-P-1:** It is a policy of the Council that new housing development in Buncrana shall be guided to those lands identified as 'Residential (Phase 1)' and to those lands identified 'Mixed Use' on the accompanying land use zoning map (Map 13.1A: 'Buncrana Land Use Zoning Map', that accompanies this part of the Plan, refers). In

addition, consideration will be given to appropriate proposals for development at other locations as follows:

(a) Within lands identified as 'Established Development.'

(b) Within the town centre.

(c) Within an entire existing unfinished housing development where the entire development has commenced, or, within that part of an existing unfinished housing development where only part of the development has commenced. The number of residential units that may be permitted shall not exceed the number of units permitted within the unfinished development, or part thereof as applicable.

All proposals shall be subject to all relevant material considerations, relevant policies of the Plan, other regional and national guidance and relevant Environmental designations.

**BC-H-P-4:** It is the policy of the Council to facilitate an appropriate provision of one-off housing in 'Agricultural/Rural' areas where the applicant can demonstrate that they need a new house at this location and can provide evidence that they, or their parents, have resided in those areas for a period of at least 7 years. All proposals shall be subject to all relevant material considerations, relevant policies of the Plan, other regional and national guidance and relevant Environmental Designations.

## 5.2. National Planning Framework

5.2.1. The National Planning Framework provides an overarching policy and planning framework for the social, economic and cultural development of the country. The NPF sets out 75 no. National Policy Objectives including the following:

NPO3a: Deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements.

NPO6: Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.

NPO11: In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and

activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.

NPO33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.

NPO35: Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

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

- 5.3.1. The site is not located within or adjacent to any designated European site. The closest such site is Lough Swilly Special Area of Conservation (Site Code 002287), which is c. 2.1km west.
- 5.3.2. The Lough Swilly Including Big Isle, Blanket Nook & Inch Lake proposed Natural Heritage Area (Site Code 000166) designated area occupies a similar designated area to Lough Swilly SAC in the area of the site.

### **5.4. EIA Screening**

- 5.4.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.4.2. 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,
- 5.4.3. The subject development comprises the construction of a single house with sewerage treatment system and associated site works. It falls well below the applicable threshold for mandatory EIA.
- 5.4.4. 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

6.1.1. The grounds of appeal can be summarised as follows: -

- Development plan Policy BC-H-P-4 has been in place since 2014 and permission has been granted in a number of instances for housing on the basis that there was no material contravention of policies H-P-29 (as the policy was known under the previous development plan) and BC-H-P-4.
- The Planning Authority now interprets policy BC-H-P-4 differently, in a manner that is inconsistent with the spirit in which it was adopted. The difference in interpretation is that planning officials now deem all areas shaded grey on the zoning map are 'Established Development', with the result that applicants from these areas do not meet the development plan requirement. This is not how the policy was interpreted previously.
- The National Planning Framework encourages local people to build within the Buncrana settlement framework.
- The applicants are from Buncrana and have longstanding connections to the area.
- The Board is requested to overturn the decision to refuse permission.

### 6.2. Planning Authority Response

6.2.1. The Planning Authority made a submission on the appeal on 11<sup>th</sup> July 2022, advising that it is satisfied to rely on planning reports on the application, which have been provided to the Board as part of the appeal documents.

### 6.3. Observations

6.3.1. None.

### 6.4. Further Responses

6.4.1. None.

## 7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal, I consider the main planning issues in the assessment of the proposed development are as follows:

- Principle of development;
- Proposed design;
- Access;
- Foul drainage; and
- Appropriate Assessment.

### 7.2. Principle of Development

7.2.1. Buncrana is identified by the Donegal County Development Plan 2018-2024 as a 'Level 2a' town, one of eight such towns in the county, and it is allocated a proportion of planned population growth over the development plan period. The development plan zoning map for Buncrana does not identify a settlement boundary but contains an 'Agricultural / Rural' zoning to the north and east, which encloses a large portion of the perimeter of the town.

7.2.2. The site is subject to the 'Agricultural / Rural' zoning and Policy BC-H-P-4 applies to housing proposals on such lands, stating thus: -

*'It is the policy of the Council to facilitate an appropriate provision of one-off housing in 'Agricultural/Rural' areas where the applicant can demonstrate that they need a new house at this location and can provide evidence that they, or their parents, have resided in those areas for a period of at least 7 years. All proposals shall be subject to all relevant material considerations, relevant policies of the Plan, other regional and national guidance and relevant Environmental Designations.'*

7.2.3. The Planning Authority refused permission on the basis that the applicants failed to demonstrate compliance with Policy BC-H-P-4, in that no evidence was provided that they or their parents had resided within any part of Buncrana zoned "Agricultural/Rural" for a period of at least seven years.

7.2.4. In appealing the decision, the applicant states that compliance with the policy was clarified at the AI and CAI stages of the application and that a map was provided to



the Planning Authority, which identified the location of relevant sites and a written explanation as to their connection to applicants and the subject site. The applicant also states that the Planning Authority now interprets the policy differently to the spirit in which it was adopted, whereby areas shaded grey on the Buncrana zoning map are now deemed to be 'Established Development', with the result that applicants from these areas do not meet the development plan requirement.

- 7.2.5. I have given consideration to the information provided as part of the application, in particular the map provided at the CAI stage, and I am concerned that no housing need has been demonstrated, as is required by Policy BC-H-P-4. The map provided at the CAI stage identifies the location of two houses which are stated to belong to parents of the applicants and it also identifies a house described as 'Roisin Henderson's first dwelling'. I am also aware that a letter was also provided with the application, by an Elected Member of Donegal County Council, which indicates the connection of the applicant, Roisin Henderson, to the area. This documentation may demonstrate a connection to the area but does not demonstrate a housing need.
- 7.2.6. Moreover, I am concerned that a grant of permission for housing on a site zoned for Agricultural/Rural purposes, which is not related to wider agricultural activity, would be at odds with the development plan's strategic approach to housing development in Buncrana and would also be incompatible with the provisions of the National Planning Framework, which promotes compact growth patterns. The site is removed from the urban area of Buncrana and the intervening area is largely undeveloped. There are also Residential (Phase 1) zoned lands between the subject site and the town centre, which remain undeveloped.
- 7.2.7. In my view, a grant of permission for urban generated housing on this site constitutes leapfrogging of other more sequentially closer sites to the town centre, to the detriment of the orderly development of Buncrana. Further, the development of further housing on lands subject to the Agricultural/Rural zoning, without adequate justification, serves to undermine the role of Buncrana in the delivery of the development plan Core Strategy and may jeopardise its ability to act as a driver of population and economic growth. I thus recommend that permission should be refused on this basis.

### 7.3. **Proposed Design**

- 7.3.1. The proposed house has a traditional, two-storey form, with single storey projecting elements on the front and rear elevations. It incorporates a ridge height of c.8m and has a stated gross floor area of 237sqm.
- 7.3.2. The site is capable of accommodating a house of the proposed scale but I have concerns regarding the proposed design, in particular the projecting element on the front elevation. Appendix 4 of the development plan, Design Guide, advises that porches should be closely integrated with the proportion and scale of the building. This projecting element is excessively wide and is, in my view, an inappropriate feature of the design. Should the Board decide to grant permission, I recommend a condition be attached requiring this element to be omitted and replaced by a traditionally scaled and designed porch element. The revised design can be agreed with the Planning Authority.
- 7.3.3. The provision of a terrace on the roof of the rear projecting element would allow for direct overlooking of the east-adjointing house, which has an open shared boundary with the subject site. Should the Board decide to grant permission, I recommend a condition be attached requiring omission of the terrace.

#### 7.4. Access

- 7.4.1. The vehicular access is proposed in the north-east corner of the site. Visibility splays of 70m are identified as achievable in both directions from the access. The site layout drawing includes a Traffic Survey Report, which details the results of a survey undertaken on 28<sup>th</sup> May 2021 and which indicates that the average speed on the road is 36.8km/h.
- 7.4.2. In its report on the application, the Planning Authority's Roads Department requested additional information, in particular requesting demonstration of required sightlines and a letter of consent from affected landowners in respect of clearance required as part of the proposed sightlines. This request was not included in the AI request and the Planning Report indicated satisfaction regarding the proposed sightlines, on the basis of the results of the Traffic Survey Report.
- 7.4.3. The site is located on a section of the L-7091 that is subject to the 80km/h speed limit and there is a requirement for sightlines of at least 90m in both directions. The proposed sightlines identified on the site layout drawing are below the minimum required for an 80km/h speed limit and, further, it appears to me that the eastward

sightline is impeded by the roadside boundary of the east-adjointing property, which consists of a post and rail fence and stone clad pillars in the area of the site access. The access to this adjacent property is not identified on the site layout drawing and no indication of consent to works required as part of the provision of visibility splays was provided with the application. Visibility from the site access is therefore likely to be less than that identified on the site layout drawing.

- 7.4.4. As I am recommending that permission should be refused on other substantive grounds, I have not pursued the issue further. Should the Board be minded to grant permission, they may wish to treat this as a new issue and to request the applicant to demonstrate the provision of 90m sightlines in both directions from the site access and to provide written consent from affected landowners to undertake the necessary work to provide such sightlines.

#### **7.5. Foul Drainage**

- 7.5.1. The development includes the provision of septic tank and percolation area. The Site Characterisation Form submitted with the application identifies the category of aquifer as 'Poor', 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.
- 7.5.2. The Characterisation Form indicates that a trial hole with a depth of 2.2m recorded 300mm of topsoil and 1900mm of silt. The water table and bedrock are stated to have not been encountered. In relation to the percolation characteristics of the soil, a sub-surface percolation test (T-test) result of 46.28min/25mm was returned. The Characterisation Form concludes that a septic tank and percolation area are appropriate for the site.
- 7.5.3. 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.

#### **7.6. Appropriate Assessment**

## Appropriate Assessment Screening

### *Compliance with Article 6(3) of the Habitats Directive*

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

### *Background on the Application*

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

### *Screening for Appropriate Assessment- Test of likely significant effects*

- 7.6.3. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

- 7.6.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

### *Brief description of the development*

- 7.6.5. The development is described at Section 2 of this Report. In summary, permission is sought for the construction of a dwelling house and domestic garage, together with a septic tank and percolation area on a site with a stated area of 0.5ha.

## European Sites

- 7.6.6. The site is not located within or adjacent to any European site, with the closest such site being Lough Swilly Special Area of Conservation (Site Code 002287), which is c. 2.1km west.

- 7.6.7. There are no open watercourses or drains within or bounding the subject site. Available EPA mapping indicates that there is a watercourse to the south of the site, which drains southwest-ward and which drains into Lough Swilly at Buncrana.

## Evaluation of Potential Significant Effects

- 7.6.8. Construction activity may give rise to run-off from the site containing suspended solids but the site is set away from the watercourse and the presence of intervening landform will provide a buffer for any overland water flows. In this context, I am satisfied that there is no real likelihood of significant effects on Lough Swilly SAC.
- 7.6.9. For the operational phase, foul water is proposed to be treated within a septic tank and percolation area. A site characterisation report has been provided with the application, which confirms that the site is suitable for installation of a septic tank system. 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 can be excluded.
- 7.6.10. Surface water is proposed to discharge to the watercourse to the south of the site, via piped connection. In view of the smallscale nature of the development and the separation distance from Lough Swilly, I am satisfied that it is unlikely that suspended solids or pollutants would be transferred from the site to Lough Swilly. Indeed, in the unlikely event that suspended solid or pollutant content were transferred from the site to Lough Swilly, I am satisfied that it would not be of sufficient scale to give rise to significant effects.

#### *Screening Determination*

- 7.6.11. 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 the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site No. 002287, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.
- 7.6.12. This determination is based on the following: -
- The separation distance between the subject site and the European site and the absence of a direct hydrological connection between the sites.

## 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 on lands that are zoned for 'Agricultural / Rural' purposes under the Donegal County Development Plan 2018-2024,
- Policy BC-H-P-4 of the Donegal County Development Plan 2018-2024 which requires applicants for proposed housing in 'Agricultural/Rural' areas to demonstrate a housing need at the location,
- The provisions of the National Planning Framework, which promotes which promotes compact growth patterns and which prioritises the provision of housing at locations that can support sustainable development, and
- The documentation on file provided as part of the application and appeal

The Board considers that, in the absence of a demonstrated housing need at this location, the proposed development would result in a haphazard and unsustainable form of development, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. Further, the development of additional housing on lands subject to the Agricultural/Rural zoning, without adequate justification, serves to undermine the role of Buncrana in the delivery of the development plan Core Strategy and may jeopardise its ability to act as a driver of population and economic growth. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Barry O'Donnell  
Planning Inspector

7<sup>th</sup> December 2022.

