



An
Bord
Pleanála

Inspector's Report

ABP-313804-22

Development	Demolition of 13 partially built dwellings and garages. Construction of 15 dwellings and associated site works. A Natura Impact Statement (NIS) was submitted with the application.
Location	Navenny Street, Navenny, Ballybofey, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2151716
Applicant(s)	McHugh Bros (Builders) Limited.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Cora McIntyre.
Observer(s)	None.
Date of Site Inspection	5 th December 2022.

Inspector

Barry O'Donnell

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
4.0 Planning History.....	10
5.0 Policy Context.....	11
6.0 The Appeal	21
7.0 Assessment.....	23
8.0 Recommendation.....	40
9.0 Reasons and Considerations.....	40
10.0 Conditions	40

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 1.19ha and is located in the townland of Navenny, Ballybofey, Co. Donegal. The site is located adjacent to the River Finn SAC and is set back slightly from the river itself.
- 1.2. The site contains a number of partially constructed houses and associated garages and there is also evidence of abandoned construction materials in a number of areas. The site is currently in a derelict/abandoned condition and is enclosed from Navenny Street by heras security fencing, which extends along the road frontage of both the subject site and the east-adjoining lands.
- 1.3. The site is to the south of Ballybofey town centre, in a residential neighbourhood. There is a mix of low-density housing and one-off housing in the area, including the Beeches estate, which lies to the south of the site, on the opposite side of Navenny Street.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises: -
 - (a) Demolition of 13 No. partially built dwellings and 8 No. partially built detached garages,
 - (b) Construction of 24 No. two-storey dwellings within 12 No. semi-detached blocks,
 - (c) Connection to existing public foul sewer,
 - (d) Connection to existing public storm drainage,
 - (e) Pedestrian road crossing across Navenny St – L-3044-3,
 - (f) All associated site works.
- 2.2. The proposed layout was amended at the Additional Information stage, including the omission of 3 proposed houses.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 19th May 2022, subject to 35 No. conditions. The following conditions are relevant to the appeal.
2. (a) The four number semi-detached dwellings (Type B2) and one number detached dwelling (Type C) located to the rear (northwest) of the site within flood zone A shall be omitted.
- (b) The pair of semi-detached dwellings to the southeast of the site entrance shall be omitted and replaced with one number detached dwelling (type c) suitably located on the site and orientated to present towards the local road.
- (c) Common open space and playground area boundaries shall be amended to take account of revised layout together with identification of appropriate boundary treatment and all-weather surface dressing details which are compatible with the flooding status of the site.
- (d) Prior to the commencement of development revised plans drawn to a scale not less than 1:100 and 1:500 shall be submitted to the Planning Authority for written agreement in accordance with Condition No2. (a)(b)&(c). The development shall thereafter proceed in strict conformity with the agreed plans.
6. (a) Prior to first use of the development herein permitted a Stage 3 Safety Audit shall be undertaken and copies submitted to the Planning Authority and the Executive Engineer (Roads) for the written agreement of the Executive Engineer (Roads). All findings and recommendations of the Stage 3 Safety Audit shall be implemented in full in accordance with the requirements of, and to the written satisfaction of, the Executive Engineer (Roads) prior to the first occupation of the dwellings.
- (b) The exact detail and location of all traffic calming measures, island and pedestrian crossing points at the point of entry to the subject site and on the adjoining local road shall be agreed with and carried out to the written satisfaction of the Executive Engineer (Roads).

7. (a) Prior to the first occupation of any dwelling house herein permitted the following works shall be carried out in full in accordance with layout drawing number M182-01-07 received by the Council on the 28/03/2022
- A crossing point shall be installed across the county road together with the provision of associated traffic island bollards. The proposed crossing should be in accordance with “Pedestrian Crossing Specification and Guidance”. Applicant to provide drawing with required visibility splays clearly marked.
 - Both junctions on ‘The “Beeches’ housing development shall be upgraded.
 - A similar crossing with tactile kerbs shall be installed across the main entrance into the estate, with the exact location to be agreed in consultation with and to the approval of the local Roads Design Team.
 - All works shall comply with the current DMURS standards and TII specifications.
 - A **3.0m** wide footpath shall be installed along the complete site frontage to current NTA Standards together with associated 8m high street lighting columns located at 36m spacings to current Donegal County Council Standards.
- (b) Within 2 months of the planned works the developer shall notify the Council’s Road Design Section, so that the design can be checked against the current standards and set out on site prior to construction works commencing.
10. 3.0m wide wayleave shall provided over the existing 900mm diameter culvert along the entire Western Site Boundary for future maintenance purposes. This area shall be fenced off from the private houses.
17. (a) Permanent visibility splays of 70 metres shall be provided in each direction to the nearside road edge at a point 3 metres back from road edge at location of vehicular entrance. Visibility in the vertical plane shall be measured from a driver’s eye- height of 1.05 metres and 2 metres positioned at the setback distance in the direct access to an object height of between 0.26 metres and 1.05 metres. Vision Splays to be calculated and provided as per Figure 3 and Table 4 of Appendix 3 of Part B of the County Donegal Development Plan 2018-2024(as varied).

25. Post construction surface water run-off from hardcore/concreted/tarmac areas shall be directed to an appropriate attenuation measure. If such attenuation is not achievable, then surface water run-off shall be treated via serviced sediment and oil interceptor traps, prior to discharge to any stream/drainage channel that flows into the Special Area of Conservation.
29. (a) Foul drainage shall be via a temporary wastewater treatment system and pump (Independently certified by IAB, BSI or ISO EN) which discharges to the public sewer.
- (b) Treatment system shall be installed, commissioned, operated and maintained in strict accordance with the supplier's instructions until such time as capacity is available in the public foul sewer.
- (c) Operational hours of the wastewater treatment system shall be limited to between 8.30-20.00hrs daily to ensure that noise does not become a public health issue during more sensitive nocturnal hours.
- (d) Documentary evidence detailing a maintenance contract between the applicant/owners and the supplier(s) of the wastewater treatment and all associated pump systems etc. shall be forwarded to the Planning Authority following commissioning of each system.
- (e) Upon availability of capacity of the mains sewer the system shall be decommissioned and removed from the site.
31. All mitigation measures identified under S3.4 of the submitted Flood Risk Report by DSM Consulting Engineers received by the Planning Authority on 16/02/2022 shall be complied with in full.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports dated 21st October 2020, 29th March 2022 and 18th May 2022 have been provided. The first report states that the principle of development is acceptable under the zoning and the proposed layout is acceptable, subject to clarification of flood zone status for the northern part of the site. The report identifies that additional information is also required regarding landscaping proposals, foul and surface water drainage and appropriate assessment.

- 3.2.2. The second report followed receipt of the AI response. It summarises and responds to the individual AI response items and recommends that the applicant should be required to public new public notices.
- 3.2.3. The third report followed a period of additional public consultation. It identifies an ongoing issue regarding the extent of Flood Zone A identified by the applicant and recommends that housing located within Flood Zone A should be omitted. The report recommends that permission be granted subject to 35 No. conditions, which are consistent with those attached to the Planning Authority's decision.

3.2.4. Other Technical Reports

CFRAMS Team reports dated 21st October 2021 and 18th May 2022 have been provided. The first report advises that the north-west boundary of the site is located within Flood Zone A and, in this context, recommends that development should be omitted from Flood Zone A and consideration should be given to the impact of climate change of the part of the site that lies within Flood Zone B. The report also requests additional information regarding surface water drainage proposals. The second report advises of an apparent discrepancy between the Flood Zone A extent identified by the applicant and that identified by the Office of Public Works (CFRAMS mapping) and that there may be conflict between the flood area and proposed housing.

Roads Department reports dated 21st October 2021 and 13th May 2022 have been provided. The first report advises of the requirement to demonstrate adequate visibility from the proposed pedestrian crossing and to provide adequate visibility splays and vehicle turning areas within the site. The second report advises of the requirement to provide a crossing point as per submitted drawings, the requirement to raise and enclose open space/play space, the requirement for signage at the site access and footpath along the road frontage, the requirement for a public lighting scheme, the requirement to maintain a 3m wayleave along the west site boundary and requirements for specified boundary arrangements/treatments.

Roads Design reports dated 28th February 2022, 11th May 2022 and 13th May 2022 have been provided. The first report recommends a request for additional information regarding the road and boundary layout, the provision of pedestrian linkages, the submission of a road safety audit, cycle parking and public lighting. The second

report advises that no pedestrian crossing point had been provided, that no auto-track analysis or public lighting details were provided and that it was unclear whether a boundary treatment had been relocated, as had been requested. The third report advises of the requirement for the pedestrian crossover to comply with DMURS/TII requirements and that HGV turning circles are not affected by the crossover.

The Planning Authority report indicates that the **Chief Fire Officer** and **Building Control Department** were also consulted on the application but did not make a submission.

3.3. Prescribed Bodies

- 3.3.1. The Department of Housing, Local Government and Heritage (National Monuments Service) made a submission on 8th October 2021, advising that the site is in proximity to monument DG078-045-- and that there is potential for impacts on features of archaeological interest. The submission advises that an archaeological assessment should be undertaken and a report submitted as additional information.
- 3.3.2. Irish Water made a submission on 16th September 2021, advising that the Navenny pumping station is at full capacity and that a temporary packaged treatment plant should be provided, in order to treat waste on the site for discharge to the public sewer. The submission also advises of the need to apply for a connection to the watermain and to make a pre-connection application for wastewater connection.
- 3.3.3. The Planning Authority report indicates that An Taisce, the Office of Public Works, Inland Fisheries Ireland and the Loughs Agency were consulted on the application but did not make a responding submission.

3.4. Third Party Observations

- 3.4.1. A number of letters of observation were received, the issues of which can be summarised as follows: -
 - Appropriate assessment
 - Flood risk
 - Traffic and road safety

- Interference with a right of way
- Mica concerns

3.4.2. A further letter of objection was received as part of further public consultation, following the submission of significant additional information. The issues raised within this submission can be summarised as follows: -

- Proposals for temporary wastewater treatment.

3.4.3. One observer requested that adjacent housing would be connected to the public foul drainage system as part of the development.

4.0 Planning History

1451060: (ABP Ref. PL05.245842) Permission refused by the Board on 25th May 2016 for demolition of houses partially constructed under Reg Refs 0560048 and 0560089 and construction of 14 No. houses. The Board refused permission for 4 No. reasons as follows: -

1. The proposed development is considered premature pending the adoption of the Ballybofey-Stranorlar Local Area Plan. Furthermore, the provision of a public amenity park through this planning application process is considered inappropriate and the Board is of the opinion that this park should be further progressed through different legislative avenues. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to its design and layout, it is considered that the proposed development would offer an inadequate level of residential amenity to future occupiers and the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The western portion and part of the eastern portion of the subject site is located within Zone A area, identified as being subject to a 1:100 year flood event, namely a high probability of flooding. The current development plan for the area, in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government in November, 2009 states that

residential development is considered to be a highly vulnerable development within such zones. It is the policy of the planning authority to require applicants to submit flood risk assessments and Justification Tests (Policy F-P-7) for developments within such areas. It is noted that neither has been submitted within this application. The proposed development would, therefore, be contrary to the provisions of the development plan and contrary to the proper planning and sustainable development of the area.

4. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board is not satisfied that the proposed development individually, and in combination with other plans and projects would not be likely to have a significant effect on the River Finn Special Area of Conservation (site code 002301) in view of the site's conservation objectives.

0560048: Permission granted on 2nd October 2006 for demolition of existing buildings and construction of 34 No. two-storey houses, together with associated site works.

0560089: Permission granted on 2nd October 2006 for demolition of existing buildings and construction of 6 No. apartments, 8 No. duplex units and associated site works.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

- 5.1.1. Chapter 2A of the development plan contains the Core Strategy. Ballybofey-Stranorlar is identified as a 'Level 2a' town. It is one of eight Level 2a towns, which 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.
- 5.1.2. Table 2A.6 contains the Core Strategy Table, identifying population and housing growth allocations for the various settlements in the county, over the plan period, and identifying housing land requirements, to accommodate this growth. The table sets out a requirement for 39ha of residentially zoned land in Ballybofey-Stranorlar, to cater for

a population growth allocation of 838 no. persons to 2024. This equates to 310 housing units, based on an occupancy of 2.7 persons/household. The table goes on to identify a total of 10.3ha of “Primarily Residential – 1st phase” zoned lands, with a housing yield of 124 no. units based on an average density of 12 units per hectare.

5.1.3. Relevant policies include: -

CS-O-5: To support the growth of a network of ‘Strategic Towns’ (Layer 2) as key locations of population growth (providing for an additional approximate 4,500 persons by 2024) and/ or as places performing ‘Special Economic Functions’.

CS-O-12: To require growth of towns in a sequential manner outwards from the core so as to make best use of existing and planned infrastructure to the benefit of local communities and effective urban growth.

TV-P-2: It is the policy of the Council to encourage proposals for small scale residential development, including social housing schemes in towns and villages that will contribute to revitalisation and renewal subject to other policies of this Plan including Part C and subject to the proper planning and sustainable development of the area.

TV-P-4: It is a policy of the Council to ensure that development proposals within Town Centres or built up urban areas:

- Provide for distinctive buildings of a high architectural quality which contribute to a distinct sense of place and a quality public realm.
- Create strong street frontage by either, adhering to the established building line in the immediate area or establish a new building line immediately adjoining the public road adjoining where a reasonable opportunity exists to do so. A greater setback will be permitted where the development would provide for the creation a high quality urban place with sufficient landscaping/planning, street furniture etc.
- Respects, where appropriate, the context of the adjoining buildings, adjacent streetscape or buildings in the immediate area, in terms of design, height, scale and mass etc.
- Respects the style, architectural detailing (in terms of design/arrangement of fenestration, fascia/soffit treatment, general finishes and materials), eaves height, roof pitch, roof line, and overall building form and height, as appropriate, in areas characterised by traditional vernacular or high quality streetscape.

- Creates buildings of a human scale, by providing for a fine grain of development, in terms of overall scale, fenestration, size/proportions, signage and detailing and appropriate breaking of building forms along street frontages into narrow horizontal distances.
- Promote, where appropriate, visual interest through modulation and detailing of architectural elements (e.g. detailing/treatments of eaves, windows, frontages, slight variations in roof lines, setback etc).
- Utilise, where appropriate adaptable and accessible design on the ground floor to ensure their future re-use for alternative functions (e.g. retail/commercial etc).
- Avoid the use of industrial type cladding, or the glazing of extensive area of the proposed development.

UB-P-5: It is the policy of the Council to guide urban residential development in a sequential manner, outwards from the core area in order to maximise the utility of existing and future infrastructure provision, promote the achievement of sustainability, avoid 'leapfrogging' to more remote areas and to make better use of underutilised land subject to compliance with Article 6 of the Habitats Directive (where applicable).

UB-P-8: It is a policy of the Council that new residential developments shall be laid out and orientated in order to make use of the landscape characteristics including local features and vistas, and maximise opportunities presented from passive solar gain. Development adjacent to amenity areas shall be orientated to face onto the amenity areas and provide maximum informal surveillance. Locating amenity areas to the rear of properties will not be permitted.

UB-P-9: It is a policy of the Council that direct pedestrian and cycle linkages shall be provided within proposals for new residential developments so as to interconnect with central amenity areas, adjoining neighbourhood developments and neighbourhood facilities subject to compliance with Article 6 of the Habitats Directive. Linkages shall be provided in addition to the primary access to the development and shall be designed to maximise passive surveillance from surrounding properties, be well lit and maintained and the materials and finish shall be of a high quality. Linkages that follow indirect routes and/or to the rear of properties shall normally not be considered acceptable.

UB-P-10: It is a policy of the Council that proposals for new residential development shall demonstrate that a housing density appropriate to its context is achieved, and provides for a sustainable pattern of development whilst ensuring the highest quality residential environment. Lower density ranges may be required having regard to the density and spatial pattern of development on lands that abut the site. In addition, housing densities will be considered in the light of all other relevant objectives and policies of this Plan, including the objectives and policies set out in Chapter 2A, Core Strategy.

UB-P-11: Proposals for residential development shall provide a mixture of house types and sizes in order to reasonably match the requirements of different household categories within the Plan area, including those groups with particular special needs. The Council will seek to achieve a balance of housing stock to meet the needs and aspirations of the people residing within the Plan area.

UB-P-12: It is the policy of the Council both to protect the residential amenity of existing residential units and to promote design concepts for new housing that ensures the establishment of reasonable levels of residential amenity.

Policy UB-P-13: requires that large residential infill sites shall reserve 10% of the site area as a public amenity area, which shall, inter alia, be conveniently located in the development, be of high-quality design and providing for multi-functional uses, provide adequate lighting and signage and highly accessible linkages with the surrounding footpath network.

5.2. Seven Strategic Towns Local Area Plan 2018-2024

- 5.2.1. Map 3 of the local area plan is the land-use zoning map for Ballybofey-Stranorlar. It identifies that the site is primarily subject to the “Established Development” zoning, with an objective ‘*To conserve and enhance the quality and character of the area, to protect residential amenity and to allow for development appropriate to the sustainable growth of the settlement.*’ The northern-most part of the site is subject to the ‘Recreation and Amenity’ zoning, with an objective ‘*To reserve and enhance land for formal and informal open space and amenity purposes, and to make provision for new amenity and recreation facilities.*’
- 5.2.2. The zoning map also includes an advisory note, that all applications for redevelopment of this area should be accompanied by a site-specific flood risk assessment.

5.2.3. Relevant policies of the LAP include: -

Policy GEN-H-2: It is a policy of the Council to consider proposals for multiple residential development (i.e. 2 or more units) on lands zoned 'Primarily Residential' and on specified 'Opportunity Sites' on the accompanying land-use zoning maps (Map1- 7) and also to consider proposals for residential development on lands within the defined town centres and 'Established Development' areas, subject to compliance with the specific policies for each individual settlement and with all other relevant policies of this LAP, compliance with the Habitats Directive and all other material planning considerations including environmental considerations.

Policy GEN-H-10: It is a policy of the Council that applications for housing on lands zoned 'Primarily Residential' shall have regard to the indicative housing yields for each site set out in this LAP and in the event the proposed housing density and consequent yield of housing units diverges significantly from the indicative housing yields, the applicant shall demonstrate that the proposal is: (i) in keeping with the density of surrounding development and; (ii) would not have adverse impact on the amenities of adjoining properties, (iii) would otherwise come with all other objective and policies of this LAP and the requirements of the Habitats Directive and all material planning considerations including environmental considerations, and (iv) would not materially affect the Core Strategy of the CDP.

Policy UB-P-5: It is the policy of the Council to guide urban residential development in a sequential manner, outwards from the core area in order to maximise the utility of existing and future infrastructure provision, promote the achievement of sustainability, avoid 'leapfrogging' to more remote areas and to make better use of underutilised land subject to compliance with Article 6 of the Habitats Directive (where applicable).

Policy UB-P-6: It is a policy of the Council to encourage and support proposals for new residential development that will result in the regeneration and/or renewal of town centre areas or areas of vacancy and/or dereliction subject to the policies all other relevant policies of this plan including Part C, relevant national/regional guidance, relevant environmental designation and in the context of the proper planning and sustainable development of the area.

Policy UB-P-8: It is a policy of the Council that new residential developments shall be laid out and orientated in order to make use of the landscape characteristics including

local features and vistas, and maximise opportunities presented from passive solar gain. Development adjacent to amenity areas shall be orientated to face onto the amenity areas and provide maximum informal surveillance. Locating amenity areas to the rear of properties will not be permitted.

Policy UB-P-10: It is a policy of the Council that proposals for new residential development shall demonstrate that a housing density appropriate to its context is achieved, and provides for a sustainable pattern of development whilst ensuring the highest quality residential environment. Lower density ranges may be required having regard to the density and spatial pattern of development on lands that abut the site. In addition, housing densities will be considered in the light of all other relevant objectives and policies of this plan, including the objectives and policies set out in Chapter 2, Core Strategy.

Policy UB-P-13: Multiple residential developments shall, in general:

- a) On greenfield sites, include a minimum of 15% of the overall site area reserved as public amenity area;
- b) In other cases, such as large infill sites or brown field sites include a minimum of 10% of the overall site area reserved as public amenity area or
- c) On lands characterised by a large private or institutional building/s set in substantial open lands, include a minimum of 20% of the overall site area reserved as public amenity area; in accordance with and subject to the guidance set out in the 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (2009) and the requirements set out below –

The provision of public amenity open space within new residential developments shall:

- (i) Be conveniently located within the development, and designed as an integral part of the overall layout acting as a natural focal point that contributes to the visual enhancement of the development, and
- (ii) Be of a high quality design, providing for multi-functional uses, through the use of hard and soft landscaping techniques including equipped formal play areas, informal greens, furniture, paved and planted amenity areas, and
- (iii) Provide adequate lighting and signage, and highly accessible linkages with the surrounding public footpath network and other designated amenity areas, and

(iv) Include a programme of maintenance.

Policy UB-P-17: It is a policy of the Council to consider proposals for urban residential development that seek to resolve existing unfinished residential development, including through appropriate reconfiguration of developments, and such proposals shall be considered outside the population targets set by the core strategy.

5.3. National Planning Framework

5.3.1. 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:

NPO3c: Deliver at least 30% of all new homes that are targeted in settlements other than the five Cities and their suburbs, within their existing built-up footprints.

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.

NPO13: In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

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.

5.4. **Northern and Western Regional Assembly Regional Spatial and Economic Strategy 2020-2032**

5.4.1. The RSES reflects the NPF objectives in relation to compact urban development and highlights that the health of villages and towns in the Region can be significantly influenced through the delivery of new housing by utilising existing buildings, brownfield/infill sites or otherwise.

5.5. **Sustainable Residential Development in Urban Areas (2009)**

5.5.1. Chapter 6 of the Guidelines sets out key planning principles to guide the preparation and assessment of planning applications for residential development in small town and village locations.

5.5.2. Section 6.8 outlines that the primary consideration for the design and layout of residential developments in small towns and villages is that new development should relate successfully to the structure of the town or village. A number of design criteria are outlined, against which to consider such proposals. Such developments should:

- *'make the most effective use of the site, having regard to the criteria outlined below;*
- *make a positive contribution to its surroundings and take the best advantage of its location through the use of site topography, i.e. levels, views, context, landscape, design orientation (sunlight and daylight), to optimise sustainability;*
- *have a sense of identity and place appropriate to the character of the existing small town or village and a logical hierarchy of places within the scheme working from streets to semi-private and private areas;*
- *provide for effective connectivity, especially by pedestrians and cyclists so that over time, small towns and villages become especially amenable to circulation by walking and cycling rather than building up reliance on the car; and*
- *include a design approach to public areas such as streets, plazas and open spaces that is guided by the best principles of passive surveillance to encourage a safe sense of place, discourage anti-social behaviour and facilitate effective community policing.'*

5.1. Climate Action Plan 2023

- 5.1.1. The Climate Action Plan outlines actions that are required up to 2035 and beyond, as part of Ireland's effort towards addressing climate change. The Plan implements the carbon budgets and sectoral emissions ceilings published by Government in 2022 and sets a roadmap for actions to halve emissions by 2030 and reach net zero no later than 2050.
- 5.1.2. Actions are set out under a number of separate sectoral headings, including; agriculture, transport, built environment, industry, electricity, public sector, land use/forestry, the marine environment and the circular economy. Section 5 states that the most important changes to society and the economy will relate to electricity generation, buildings, transport, agriculture and land use.
- 5.1.3. For the residential sector, the Plan sets out a number of actions and key metrics, which are related to energy efficiency and performance.

5.2. Natural Heritage Designations

- 5.2.1. The site lies adjacent to the River Finn Special Area of Conservation (Site Code 002301), which encroaches to the north site boundary.

5.3. EIA Screening

- 5.3.1. The proposed development falls within the category of '*Infrastructural Projects*', under Schedule 5, Part 2 of the Planning and Development Regulations 2001-2020, where mandatory EIA is required in the following circumstances:
 - 10(b) (i) *Construction of more than 500 dwelling units.*
- 5.3.2. The subject development comprises the demolition of 13 part-constructed houses and the proposed construction of 24 houses and associated site works, on a site with a stated area of 1.19ha. The proposed development falls well below the development threshold and mandatory EIA is therefore not required.
- 5.3.3. I have considered whether sub-threshold EIA is required. The introduction of a smallscale, low-density residential development on serviced lands, which are within the built-up area of Ballybofey, will not have an adverse impact in environmental terms on surrounding land uses. The site is not designated for the protection of the landscape

or of natural or cultural heritage and, subject to incorporation of mitigation which controls surface water discharges from the site that contain suspended solids or pollutants, the development is not likely to have a significant effect on any designated European site (this is discussed in detail at Section 7.8 of my report). The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water supply and would connect to the public foul and surface water drainage networks, upon which the effect of the development would be marginal.

5.3.4. Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site on serviced lands that are within the built-up area of Ballybofey,
- The location of the site outside of any sensitive location specified in Article 109 of the Planning and Development Regulations 2001 (as amended) and the mitigation measures proposed to mitigate the impact of the development on any such site,
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination a sub-threshold environmental impact assessment report for the proposed development was not necessary.

6.0 The Appeal

6.1. Grounds of Appeal

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

- The site is located within a flood zone, with reference to condition No. 2 of the Planning Authority's decision.
- Positioning the play area adjacent to the River Finn presents a health and safety risk.
- The proposed temporary wastewater treatment system will lead to noise and air pollution and requires regular maintenance.
- The public foul network will not be upgraded for a long time and the proposed temporary WWTP will become a permanent feature. The Planning Authority has not indicated when the public network will be upgraded.
- Mica is an issue for housing in Donegal.
- Consideration should be given to the proximity of the site to the adjoining SAC and impact of the development on wildlife.
- There is an abundance of vacant housing in the Ballybofey-Stranorlar area.
- The Board refused permission for development.

6.2. Applicant Response

6.2.1. The applicant responded to the appeal on 12th July 2022, in a submission made by AL Architects. Its contents can be summarised as follows: -

- The sewerage treatment system proposed is common practice and will result in a quiet and effective system. A maintenance system will be established. It is noted that the Ballybofey-Stranorlar WWTP is due for imminent upgrade.
- No houses are proposed within Flood Zone A, as can be seen from the modelled assessment.
- The omission of houses by the Planning Authority's decision increases the size of the open area and for boundaries at a level above the flood zone. The children's

play area will have an all-weather surface to allow for year round use and will be safe.

- The River Finn SAC does not encroach into the site. An NIS was submitted with the application.
- All of the proposed works are located on 'Established Development' zoned land, with the rear portion providing amenity space.
- Mica concerns are not relevant to planning. In any case, the development provides an opportunity to build mica-free housing.
- References to an abundance of vacant housing in the area are irrelevant to the application.
- It is acknowledged that application PL05.245842 was refused. None of the refusal reasons are relevant at this point.

6.3. Planning Authority Response

6.3.1. The Planning Authority made a submission on the appeal on 12th July 2022, the contents of which can be summarised as follows: -

- The flood status of the site is not disputed, as reflected in the AI request and the Planning Authority's decision.
- There is nothing to support the suggestion that public health issues such as odour, noise or air pollution are likely to arise.
- Upgrade of the Ballybofey-Stranorlar sewer treatment system is at an advanced stage and the Planning Authority had specific regard to the Irish Water request for a temporary measure.
- The issue of Mica is not relevant to a planning application.
- The site is not located within the River Finn SAC but adjoins it. An NIS was submitted with the application and consideration was given to environmental impacts.
- The Board is requested to uphold the decision to grant permission.

6.4. Observations

6.4.1. None.

6.5. Prescribed Bodies

6.5.1. The appeal was circulated to The Heritage Council but no responding submission was received.

7.0 Assessment

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

- Principle of development;
- Layout and residential amenity;
- Flood risk;
- Wastewater;
- Road Safety, access and parking;
- Other Issues;
- Appropriate Assessment.

7.2. Principle of Development

7.2.1. The site is located at Navenny Street, south of Ballybofey town centre. Ballybofey-Stranorlar is identified by the county development plan as a 'Layer 2A' Strategic Town and Section 2A.3.3 states that it (along with other towns in this layer of the settlement hierarchy) is so-identified due to its existing population base and due to its infrastructural capacity to accommodate reasonable levels of new housing. In accordance with this designation, Core Strategy Table 2A.6 provides Ballybofey-Stranorlar with an allocation of planned housing growth over the plan period, identifying a requirement for 39ha of residentially zoned land in the town over the plan period.

7.2.2. The Seven Strategic Towns Local Area Plan contains the zoning map for Ballybofey-Stranorlar, Map 6, and the site is identified as being primarily subject to the

“Established Development” zoning, with an objective ‘*To conserve and enhance the quality and character of the area, to protect residential amenity and to allow for development appropriate to the sustainable growth of the settlement.*’ The proposed housing is located under this zoning.

- 7.2.3. The site is of a previously development nature and is an established residential neighbourhood. I am satisfied that the proposed development is consistent with the Established Development zoning and it will also contribute to delivery of the development plan Core Strategy. The development is also consistent with policies Policy UB-P-6 and Policy UB-P-17 of the Seven Strategic Towns Local Area Plan, which together support development proposals that address dereliction and the resolution of unfinished estates. I thus consider the development is acceptable in principle, subject to consideration of other relevant factors below.

7.3. Layout and Residential Amenity

- 7.3.1. As I have outlined previously, the proposed layout was amended at the AI stage, including the omission of 3 proposed houses and relocation of proposed public open space to the north-east corner of the site. The development proposed comprises a mix of 10 No. 4-bed semi-detached houses, 10 No. 3-bed semi-detached houses and 1 No. 4-bed detached house. The site is served by a single vehicular access, which routes northward for a section before turning at a sharp angle and routeing to the west site boundary where it terminates at a turning head. A spur in the area of the site access provides access to a number of the proposed houses, which are set back from the public road.
- 7.3.2. The Board will note that condition No. 2 of the Planning Authority’s decision required further revision and amendments to the proposed site layout. The condition required omission of the four northern-most semi-detached houses (type B2) and single detached house (type C), which are stated to be located in Flood Zone A, and the pair of semi-detached houses to the south-east of the site access (house type A3), which are to be replaced by single detached house. As is set out elsewhere in my report, I agree that unit types B2 and C in the northern part of the site (5 units total) should be omitted, arising from flood risk concerns. However, I do not agree that the pair of semi-detached houses to the south-east of the site access should be omitted.

Rather, I consider it adequate that the house closest to Navenny Street should be redesigned as a dual frontage house, so that it addresses the street frontage.

- 7.3.3. Omission of the northern-most units affects the overall site layout and results in this part of the site becoming undeveloped. I consider this part of the site is unsuitable for development and that the area should be provided as public open space.
- 7.3.4. I further note that compliance with condition No. 10 of the Planning Authority's decision (provision of a 3m wayleave along the west site boundary) affects the layout of the southern part of the site, as house type A2 in the southwest appears to encroach into the wayleave area. I am satisfied that housing in this area can be resited slightly to the east, to ensure adherence to the required setback, and I do not object to a commensurate reduction in the communal open space area, in view of the scale of open space to be provided elsewhere on the site.
- 7.3.5. To summarise the above assessment, I recommend the following amendments to the proposed layout: -
- The four northern-most semi-detached houses (type B2) and single detached house (type C) shall be omitted and the area shall be provided as public open space as part of the development.
 - The housing layout shall be amended as necessary to ensure a 3m wayleave is provided and maintained along the western site boundary.
 - House type A3 closest to the site access shall be redesigned as a dual frontage house, so that it addresses Navenny Street.
- 7.3.6. Should the Board decide to grant permission, I recommend a condition be attached requiring these amendments be incorporated.
- 7.3.7. I note that the appellant also expresses concern that positioning the play area adjacent to the River Finn presents a health and safety risk, but I do not share the concern. The site is set back from the River Finn and, subject to incorporation of adequate boundary treatments, I do not consider there is a risk to human health that would justify a refusal of permission.
- 7.3.8. The internal layout of the proposed houses exceeds the minimum recommendations of the *Quality Housing for Sustainable Communities (2007)* guidelines, as referenced by the development plan.

7.3.9. Rear garden areas for the houses are unstated but appear to me to be adequately sized. I note that the development plan and local area plan do not specify a minimum required area for a domestic garden and the Planning Authority did not express any concern with this aspect of the development.

7.4. Flood Risk

7.4.1. The appellant expresses concern that the development is located within a flood zone.

7.4.2. According to available CFRAMS flood map info¹, the site contains substantial flood zone designations. Flood Zone A encroaches to the northern-most part of the site, whilst Flood Zone B encompasses the majority of the site.

7.4.3. A Flood Assessment Report was submitted as part of the AI submission and it states that Flood Zone A (fluvial) encroaches to the northern end of the site, where there is a high probability of flooding, and that Flood Zone B extends over 75% of the site. The FRA goes on to state that revisions to the site layout at the AI stage ensure that there is no housing located within Flood Zone A and that housing located within Flood Zone B incorporates a minimum freeboard of 250mm above the predicted flood level. The FRA also proposes the construction of a soil bund along the east and west site boundaries, with the intention of ensuring that no flood waters are dispersed to adjoining property. The site layout drawing includes a modelled representation of the Flood Zone A and B extends, relative to the proposed development.

7.4.4. The Planning Authority's CFRAMS team commented on the application, initially advising of the extent of flood zones within the site and also, following the AI submission, advising of an apparent discrepancy between the Flood Zone A extent identified by the applicant and the extent identified by CFRAMS mapping, whereby the CFRAMS map indicates a greater encroachment onto the site.

7.4.5. *The Planning System and Flood Risk Management Guidelines* (DOEHLG, 2009) advises that a sequential approach should be taken to managing flood risk. In respect of Flood Zone A, Section 3.5 of the Guidelines states that development should be avoided in this area and should only be considered in exceptional

¹ <https://www.floodinfo.ie/map/floodmaps/>

circumstances and where the Justification Test has been applied. In respect of Flood Zone B, the section advises that housing is generally considered to be inappropriate in this zone unless the requirements of the Justification Test can be met. Table 3.1 of the Guidelines identifies housing as a 'highly vulnerable development'.

7.4.6. Section 3.3 of the FRA includes a Justification Test, stated to be prepared in accordance with the requirements of the flood risk management guidelines. It states as follows: -

1. The subject site has been zoned or designated for development by the development plan.
2. *(i) the development will not increase the risk of flood* – storm drainage is provided as part of the development, which will limit discharge to the greenfield run-off rate. Flood zone B flood water will be managed within the site.
(ii) the development includes measures to minimise flood risk to people, property, the economy and the environment – No housing is proposed in Flood Zone A. Proposed floor levels incorporate a minimum freeboard of 250mm above predicted flood levels and no bedrooms are proposed at ground floor level. Soil bunds will be constructed along boundaries with adjoining properties.
(iii) The development includes measures to ensure that residual risks can be managed to an acceptable level – the site currently has no drainage system or flood controls. The proposal incorporates storm drainage with attenuation, which accounts for large events. The proposed site layout has been developed so that flood levels will have no effect on housing and will have a minimal effect on services, access and adjacent property.
(iv) The development addresses (i), (ii) and (iii) in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes – The site contains unfinished housing and has become overgrown and unsightly. The proposal will remove existing development and will complete the development of the site.

7.4.7. Regarding the relationship of the flood zones to the proposed development, I note the comments of the Planning Authority's CFRAMS team of an apparent discrepancy

between the Flood Zone A extent identified by the applicant and the extent identified by CFRAMS mapping. I have given consideration to and compared site layout drawing No. M182-01-07 to the available CFRAMS maps for the area and there appears to be a discrepancy between the two identified extents, with reference to its proximity to the west-adjointing bungalow. I am unclear of the reason for the discrepancy and the applicant has not commented on the issue as part of the appeal response.

- 7.4.8. CFRAMS modelling of flood events under the 1-in-100 rainfall event (1%) and 1-in-1000 (0.1%) rainfall event predict the likely extent and depth of flood waters on the site. For the 1-in-100 event, the predicted flood extent does not appear to affect the proposed housing. The 1-in-1000 event is predicted to have a more significant effect on the site, with flood waters shown to cover the majority of the site, to varying depths. The flood waters are shown to be deepest (0.5-1m) at the north end of the site, 0.25-0.5m deep in the centre of the site and up to 0.25m deep at the south end.
- 7.4.9. The 5 No. northern-most proposed houses, described as type B2 and C, are located in the area of greatest predicted flood depth and a number appear to be in the area of 0.5-1m. In view of this, I agree with the Planning Authority that they should be omitted. I note in this respect that, in responding to the appeal, the applicant does not contest the omission of the affected units.
- 7.4.10. All of the remaining houses are shown by site layout drawing No. M182-01-07 to be at least partially located within Flood Zone B.
- 7.4.11. Regarding the Justification Test, I note that the FRA includes surface water drainage calculations and it states that the required attenuation (14.69m³) can be accommodated within the drainage network, with additional capacity available. Run-off is shown to drain to an interceptor prior to discharge to an existing public storm sewer and the discharge point incorporates a non-return flapvalve. The risk of flooding elsewhere is therefore not increased by the development. Additionally, housing within Flood Zone B incorporates a minimum freeboard of 250mm above the predicted flood level and 600mm high soil bunds are incorporated along the east and west site boundaries, the stated intention of which is to ensure no flood waters can discharge to third party lands. Consideration must also be given to the site's

unfinished and derelict condition. Its resolution and completion would contribute to revitalisation of this part of Ballybofey and will enhance the character of the area.

7.4.12. In view of the foregoing, I conclude that the criteria of the Justification Test have been satisfied.

7.5. **Wastewater**

7.5.1. Wastewater is proposed to drain to a temporary on-site sewage treatment plant, which is located in the communal open space in the southern part of the site. In this respect, I note that Irish Water advised in its submission that the Navenny pumping station is at full capacity and that a temporary packaged treatment plant should be provided, in order to treat waste on the site prior to discharge to the public sewer.

7.5.2. The appellant expresses concern that the public foul network will not be upgraded for a long time and that the proposed temporary WWTP will become a permanent feature. She also expresses concern that the proposed temporary wastewater treatment system will lead to noise and air pollution and requires regular maintenance.

7.5.3. In its submission on the appeal, the Planning Authority states that upgrade of the Ballybofey-Stranorlar sewer treatment system is at an advanced stage and that, in arriving at its decision on the application, consideration was given to the Irish Water request for a temporary measure.

7.5.4. Regarding the concerns over the tenure of the temporary on-site system, Irish Water's advice on the application is that the pumping station is at capacity, thus giving rise to the request for temporary on-site treatment, and the Planning Authority's submission on the appeal states that upgrade of the WWTP is at an advanced stage. In view of this, I see no reason to object to the temporary arrangement requested by Irish Water for the development. However, in saying this, I am concerned that the treatment plant is located within the Flood Zone B extent (the NIS submitted with the application advises that the tank should be sealed, to protect against water ingress). There are other open space areas in the area adjacent to Navenny Street that are outside of the flood zone and which appear to be adequately sized to accommodate the system. Should the Board decide to grant permission, I recommend a condition be attached requiring that the sewage

treatment should be relocated on the site, to a location outside of the flood zone extent.

- 7.5.5. Regarding concerns over the potential for noise and air pollution, the provision of temporary on-site systems such as that proposed is relatively common and I am satisfied that, provided the system is installed and maintained in accordance with Irish Water's requirements, nuisance issues such as those identified are unlikely to arise.

7.6. Road Safety, Access and Parking

- 7.6.1. The development is served by a single vehicular access, which routes northward for a section before turning at a sharp angle and routeing to the west site boundary where it terminates at a turning head. A spur in the area of the site access provides access to a number of the proposed houses, which are set back from the public road.
- 7.6.2. Visibility splays of 3m x 70m are identified in both directions from the site access but the eastward splay is shown to traverse third party lands. I noted on my site visit that the majority of the roadside boundary for both the subject site and east-adjointing lands has been removed and replaced by heras fencing, with the result that there is already visibility through the third party lands. In view of the fact that works to the third party lands are not required, I consider the proposed sightlines are acceptable.
- 7.6.3. The overarching internal carriageway layout is acceptable but, I consider it is excessively wide, at c.6m. DMURS advises that a 6m wide carriageway is '*generally too wide for local streets*'. For a development of this scale a reduced width, of 5-5.5m would be more appropriate and would allow for incorporation of a verge and tree planting along the route, which will assist with place-making. I also consider the junction of the site access and Navenny Street incorporates an excessive corner radii and requires reconsideration. The proposed junction layout is likely to lead to conflict between motorists and pedestrians, given there is a crossing point in close proximity to the junction. DMURS advises that the design of vehicle crossovers from streets should '*clearly indicate that pedestrians and cyclists have priority over vehicles*'. Should the Board decide to grant permission, I recommend a condition be attached requiring the detailed layout of the site access from Navenny Street and

internal carriageway to be agreed with the Planning Authority and that it should incorporate DMURS place-making principles.

7.6.4. I note that condition No. 7 of the Planning Authority's decision required as follows: -

'7. (a) Prior to the first occupation of any dwelling house herein permitted the following works shall be carried out in full in accordance with layout drawing number M182-01-07 received by the Council on the 28/03/2022

- A crossing point shall be installed across the county road together with the provision of associated traffic island bollards. The proposed crossing should be in accordance with "Pedestrian Crossing Specification and Guidance". Applicant to provide drawing with required visibility splays clearly marked.*
- Both junctions on 'The "Beeches" housing development shall be upgraded*
- A similar crossing with tactile kerbs shall be installed across the main entrance into the estate, with the exact location to be agreed in consultation with and to the approval of the local Roads Design Team.*
- All works shall comply with the current DMURS standards and TII specifications.*
- A **3.0m** wide footpath shall be installed along the complete site frontage to current NTA Standards together with associated 8m high street lighting columns located at 36m spacings to current Donegal County Council Standards.*

Within 2 months of the planned works the developer shall notify the Council's Road Design Section, so that the design can be checked against the current standards and set out on site prior to construction works commencing.'

7.6.5. In view of the absence of a footpath connection on the nearside edge of the road, and in order to provide for connectivity to the centre of Ballybofey, I agree with the Planning Authority that a connection to the footpath network on the opposite side of the road should be provided. The location of the crossing was revised at the AI stage and I note that the Planning Authority's Roads Department expressed broad satisfaction regarding the revised location.

7.6.6. Parking for the houses is not identified but I am satisfied that the front garden areas are of sufficient width and depth to provide for off-street parking.

7.7. Other Issues

- 7.7.1. I note the appellant's concerns regarding Mica issues in the area and vacancy rates in the area.
- 7.7.2. Regarding Mica, I do not consider this to be relevant consideration for this planning appeal and, further, that it would be unjustified to refuse permission on this basis.
- 7.7.3. Regarding vacancy, the need for housing in the area has been determined by the development plan, which allocates a portion of planned housing to Ballybofey-Stranorlar and the development of the site will contribute to the delivery of the development plan's core strategy. I thus consider it would be unjustified to refuse permission on this basis.

7.8. **Appropriate Assessment**

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 7.8.1. 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

- 7.8.2. The applicant submitted a *Natura Impact Statement* as part of the application, prepared by DSM Consulting Engineers. It provides a description of the proposed development, identifies European sites within a possible zone of influence and identifies potential impacts in relation to the River Finn SAC.
- 7.8.3. I would advise that the Board that the NIS is not of a standard format and required information to assist my assessment, for example survey dates and the qualification/experience of the surveyor, has not been outlined therein. I have therefore given limited weight to the NIS in my assessment.
- 7.8.4. Notwithstanding the above, having reviewed the appeal documents provided and submissions, I am satisfied that there is adequate information in relation to the European sites to allow for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

Need for Stage 1 Appropriate Assessment Screening

- 7.8.5. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken on any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives.
- 7.8.6. The proposed development is not directly connected with or necessary to the management of a European site and accordingly is subject to the provisions of Article 6(3).

Brief Description of the Development

- 7.8.7. The applicant provides a description of the proposed development at Section 2 of the NIS. The development is also summarised at Section 2 of this Report. In summary, permission is sought for demolition of 13 No. partially built dwellings and 8 No. partially built detached garages and construction of 21 No. two-storey dwellings, connection to existing services, pedestrian road crossing across Navenny Street and associated site works. The site has a stated area of 1.19ha and is of a previously developed nature, located adjacent to the River Finn SAC.
- 7.8.8. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, I consider the following potential impact mechanisms require examination:
- The impact of surface water discharges from the site during the construction and operational phases on water quality within a European site.
 - The impact of potential flood water discharges on water quality within a European site.

Submissions and Observations

- 7.8.9. The submissions from the applicant and the Planning Authority are summarised in Sections 6 of this Report. The appellant identifies the proximity of the site to the River Finn SAC and expresses concern regarding potential impacts on wildlife.

European Sites

- 7.8.10. The Screening assessment within the NIS identifies that the River Finn SAC (Site Code 002301) is adjacent to the subject site. In addition, I note the following sites are within a 15km search zone: -

- Croaghonagh Bog SAC (Site Code 000129), c. 9.6km south-west.

7.8.11. The following sites in Northern Ireland are also within a 15km search zone: -

- Moneygal Bog SAC (Site Code UK0030211), c. 10.5km south-east,
- River Foyle and Tributaries SAC (Site Code UK0030320), c. 14.25km east.

7.8.12. The Screening assessment also identifies a number of SAC/SPA, which are stated to be 8km of the site but the majority of which are in excess of 18km from the site. The Screening also identifies Natural Heritage Area sites, which are not relevant to appropriate assessment.

7.8.13. Available EPA drainage mapping² for the area identifies that the River Finn flows eastward from Ballybofey and flows into the Foyle River at Lifford. The Foyle River flows northward from this point.

7.8.14. In the case of Croaghonagh Bog SAC, Moneygal Bog SAC and River Foyle and Tributaries SAC, in view of the above I am satisfied that there is no hydrological connection to the site. Taken together with the separation distance from the subject site, I am satisfied that there is no possibility of significant effects arising from the development and have not considered the sites any further in my assessment.

7.8.15. A summary of River Finn SAC is provided in the table below.

European (Site code)	List of Qualifying interest /Special conservation Interest
River Finn SAC (Site Code 002301)	<ul style="list-style-type: none"> • Oligotrophic waters containing very few minerals of sandy plains • Northern Atlantic wet heaths with Erica tetralix • Blanket bogs • Transition mires and quaking bogs • Salmon • Otter

7.8.16. The River Finn is the only European site identified by the Screening as having the potential to experience significant effects arising from the development. The Screening states: -

² <https://gis.epa.ie/EPAMaps/>

'This SAC abuts the proposed site and therefore there is a possibility of deterioration of water quality and damage to habitats due to pre and post development works. These possible effects and any mitigation measures will now be investigated.'

Construction phase impacts

- 7.8.17. As has been outlined already, I consider that the impact of surface water discharges from the site during the construction and operational phases on water quality within a European site and the impact of potential flood water discharges on water quality within a European site require consideration.
- 7.8.18. The Screening report assesses surface water issues but does not assess flood water issues.
- 7.8.19. The northern boundary of the site abuts the River Finn SAC. The natural topography of the site sees levels fall from south to north. According to survey drawing No. 971-P01-101 levels fall from a high point of 21.8m AOD at the south-west corner, to a low point of 18m AOD at the north-east corner.
- 7.8.20. The proposed housing is set away from the shared boundary with the SAC but in view of the site contours, the development may give rise to direct surface water discharges to the SAC containing suspended solids or pollutants. Salmon is listed as a qualifying interest of the SAC and is at risk from reduced water quality. From the information available to me, I consider there is a risk of significant effects arising from potential surface water discharges from the site and the issue therefore cannot be excluded at this stage.
- 7.8.21. For the operational phases, surface water is proposed to discharge to an existing storm sewer which ultimately discharges to the River Finn. However, prior to discharge from the site, all surface waters are routed through an oil/grit interceptor. Calculations provided as part of the application also state that the surface water pipe network has adequate storage capacity to accommodate all surface waters from the site. I consider the risk of pollutants being transferred via attenuated discharge is low and, in the event that a discharge from the site was transferred to the European sites, the quantity is unlikely to be of such a scale that significant effects would arise. I am therefore satisfied that the potential for likely significant effects on qualifying interests within the SAC and SPA can be excluded at this stage.

- 7.8.22. Regarding floodwater, the site does not currently incorporate drainage controls. The north end of the site contains proposed public open space and rear gardens associated with some of the proposed houses, which provides an intervening buffer in the space between proposed development and the SAC. I am satisfied that this buffer is adequate to ensure suspended solid and/or pollutant content is unlikely to discharge from the site, in a flood event. I am therefore satisfied that the potential for likely significant effects on qualifying interests within the SAC can be excluded at this stage.
- 7.8.23. The Board will note that the five northern-most houses (i.e. those closest to the SAC) were omitted by the Planning Authority on flood risk grounds and I have recommended that that element of the decision be upheld. This amendment to the scheme will have the effect of increasing the buffer between the proposed development and the SAC.
- 7.8.24. There is a temporary on-site wastewater treatment system located within the flood plain, which is identified by the NIS as being sealed to guard against water ingress. The system will collect and treat waste on the site, but subsequent discharge is to the public network and there is no dispersal within the site. Potential effects on water quality arising from treatment therefore do not arise. I have previously recommended that the system should be relocated, outside of the flood plain.

Screening Determination

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

- River Finn SAC (Site Code 002301)

Stage 2 Appropriate Assessment

- 7.8.26. The NIS examines and assesses potential adverse effects of the proposed development on the SAC. It concludes that: -

'If the mitigation measures outlined in section 5.0 above are adhered to and if the property is managed post construction then the development should have no effect on any of the qualifying interest of the SAC... Given that the current site is an unmanaged brownfield site the proposed development will result in an increased quality of runoff management. If the works are carried in accordance with these mitigation measures and proper management of the site then there should be no significant effects on the qualifying interests of the River Finn SAC or any other Natura 2000 site.'

Appropriate Assessment of Implications of Proposed Development

7.8.27. The following is a summary of the objective scientific assessment of the implications of the project on the qualifying interest features of the European sites 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

7.8.28. The relevant European site for Stage 2 Appropriate Assessment is River Finn SAC (Site Code 002301). 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.

7.8.29. The main aspects of the development that could adversely affect the conservation objectives of European sites relate to: -

- Impacts on water quality arising from surface water discharges which contain suspended solids and/or pollutants, at the construction stage.

Evaluation of Effects

7.8.30. The River Finns SAC is subject to the following conservation objectives: (a) To restore the favourable conservation condition of Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*), (b) To restore the favourable conservation condition of Northern Atlantic wet heaths with *Erica tetralix*, (c) To restore the favourable conservation condition of Blanket bogs, (d) To restore the favourable conservation condition of Transition mires and quaking bogs, (e) To

maintain the favourable conservation condition of Atlantic Salmon and (f) To maintain the favourable conservation condition of Otter.

- 7.8.31. Surface water discharges during construction have the potential to cause the release of suspended solids and pollutants directly into the SAC and river.
- 7.8.32. Regarding Salmon, the NIS identifies that surface water discharges have the potential to affect this qualifying interest and that large instantaneous runoff events during construction could have a devastating effect on habitat and water quality. The River Finn system is identified as one of Ireland's Salmon waters and that it includes all levels of the life cycle, including spawning, nursery and holding areas. It further identifies, based on EPA mapping, that the River Finn has a 'poor' water status and is at risk of deterioration.
- 7.8.33. Regarding Otter, the NIS states that feeding and commuting habitat may occur along the riverbank and references a survey undertaken in 2018 by Woodrow Sustainable Solutions (associated with dredging works), which included evidence of Otter activity in the area of McCumhail Park and Stranorlar Bridge, approx. 1km upstream. As the proposed development is set back from the river, direct impacts on Otter are not predicted to arise but the NIS states that indirect impacts, in the form of water quality effects on prey ability, may arise.

Proposed mitigation

- 7.8.34. Section 5 of the NIS contains proposed mitigation, which can be summarised as follows: -
- Erection of silt barrier along north site boundary, along with drainage ditch and silt lagoon,
 - No excavation to take place on days of predicted high rainfall,
 - Spoil heaps to be located at south end of the site,
 - Construction compound to be located at south end of site, with bunded refuelling area and waste storage area,
 - Bulk storage tanks to be bunded with capacity of 110% of that of the tank,

- Site preparation and construction to adhere to best practice and conform to Inland Fisheries Ireland guidance within '*Requirements for the Protection of Fisheries Habitat During Construction and Development Works at River Sites*'.
- Existing trees and hedges should not be cut or removed where possible and no works to be undertaken in buffer zone between the site and river.
- Construction-related machinery not to be washed out on the site or access road.

7.8.35. The proposed mitigation is likely to ensure that no suspended solids or other pollutants will be discharged from the site during construction. Additionally, I consider further mitigation in the form of (a) water quality monitoring should be undertaken and maintained throughout the construction phase, in order to ensure that other mitigation measures are effective and that water quality within the River Finn is not affected by surface water discharges from the site and (b) proposals for wheel washing of construction vehicles. This can be controlled by condition, should the Board decide to grant permission.

In-combination effects

7.8.36. 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

7.8.37. 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 River Finn (Site Code 002301), in view of the Conservation Objectives for the site. 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

- 7.8.38. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended.
- 7.8.39. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on the River Finn SAC (Site Code 002301). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of those sites, in light of their conservation objectives.
- 7.8.40. 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 granted, for the following reasons and considerations set out hereunder.

9.0 Reasons and Considerations

- 9.1. Having regard to the “Established Development” zoning that applies to the site under the Seven Strategic Towns Local Area Plan 2018-2024, which supports ‘*development appropriate to the sustainable growth of the settlement*’, the nature and scale of the proposed development and the pattern of development in the vicinity, the proposed development would be an appropriate form of development, would not increase the risk of flooding in the area and would be acceptable in terms of traffic and pedestrian safety. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by additional
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	<p>information submitted on 16th February 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The development shall be amended as follows: -</p> <ul style="list-style-type: none"> • The four northern-most semi-detached houses (type B2) and single detached house (type C) shall be omitted and the area shall be provided as public open space as part of the development. • The housing layout shall be amended as necessary to ensure a 3m wayleave is provided and maintained along the western site boundary. • House type A3 closest to the site access shall be redesigned as a dual frontage house, so that it addresses Navenny Street. • The vehicular crossover from Navenny Street shall incorporate a reduced turning radii together with the use of vertical deflections, in line with the recommendations of Section 4.3.1 of the <i>Design Manual for Urban Roads and Streets</i>, in order to give priority to pedestrians and cyclists. • The internal carriageway shall have a maximum width of 5.5m and shall incorporate a verge of sufficient area to facilitate tree planning and landscaping. <p>Prior to the commencement of development, the developer shall submit, for the written agreement of the Planning Authority, revised plans which incorporate such amendments.</p> <p>Reason: In the interests of proper planning and sustainable development and to ensure pedestrian and cyclist safety.</p>

3.	<p>Proposed mitigation measures contained within the Natura Impact Statement shall be implemented in full, except where otherwise required in order to comply with conditions attached to this Order.</p> <p>Reason: In the interests of the protection of biodiversity.</p>
4.	<p>Prior to the commencement of development the applicant shall submit and agree proposals for a programme of water quality monitoring of the River Finn during the construction phase. The approved programme shall include mechanisms for reporting to the Planning Authority and mitigation/remediation in the event of any deterioration of water quality arising from the development.</p> <p>Reason: In the interests of the protection of biodiversity.</p>
5.	<p>Prior to the commencement of development the applicant shall submit and agree proposals for wheel washing of vehicles during the construction phase.</p> <p>Reason: In the interests of proper planning and sustainable development.</p>
6.	<p>Details of the materials, colours and textures of all external finishes to the proposed houses shall be submitted to and agreed in writing with the planning authority prior to commencement of development.</p> <p>Reason: In the interests of the visual amenities of the area.</p>
7.	<p>Foul effluent from the development shall be discharged to a temporary effluent treatment system, which shall be relocated to a part of the site outside the Flood Zone A and B designations.</p> <p>The treatment system, including the method of effluent transfer from the site to the public network, shall be designed, installed and maintained in accordance with the requirements of Irish Water and the planning authority. The treatment system shall not require the alteration of ground levels within the site boundaries.</p> <p>Following the completion of the proposed upgrade works to the Ballybofey-Stranorlar wastewater treatment plant by Irish Water, all foul effluent arising from the proposed development shall discharge to the public sewer system</p>

	<p>and the onsite treatment system shall be decommissioned and removed from the site.</p> <p>Reason: In the interest of proper site drainage and for the protection of public health.</p>
8.	<p>A hard and soft landscaping strategy and boundary treatment plan shall be submitted to and agreed in writing with the planning authority, prior to commencement of the development. The development shall thereafter be carried out in accordance with the agreed scheme.</p> <p>Reason: In the interests of visual amenity.</p>
9.	<p>The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation relating to the proposed development, and</p> <p>(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues:</p> <p>(i) the nature and location of archaeological material on the site, and</p> <p>(ii) the impact of the proposed development on such archaeological material.</p> <p>A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p>

	<p>Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.</p>
10.	<p>Car parking shall be provided in accordance with the Planning Authority's requirements.</p> <p>Reason: In the interests of orderly development and traffic safety.</p>
11.	<p>All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.</p> <p>Reason: In the interests of orderly development and the visual amenities of the area.</p>
12.	<p>Public lighting shall be provided in accordance with a scheme, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available by the developer for occupation of any house / unit within the relevant phase of the development.</p> <p>Reason: In the interests of amenity and public safety.</p>
13.	<p>The proposed development shall make provision for the charging of electrical vehicles. All car parking spaces serving the proposed development shall be provided with electrical connections, to allow for the future provision of future charging points and in the case of 10% of each of these spaces, shall be provided with electrical charging points by the developer. Details of how it is proposed to comply with these requirements, including details of the design of, and signage for, the electrical charging points (where they are not in the areas to be taken in charge) shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of suitable transportation.</p>
14.	<p>Water supply and surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services,</p>

	<p>details of which shall be agreed in writing prior to the commencement of development.</p> <p>Reason: In the interest of public health.</p>
15.	<p>The developer shall enter into water and wastewater connection agreements with Irish Water, prior to commencement of this development.</p> <p>Reason: In the interest of public health and orderly development.</p>
16.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall include details of intended construction practice, noise and dust management measures, traffic management, parking proposals for construction workers on the site and storage of materials and waste within the site.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
17.	<p>Prior to commencement of development, the developer shall submit a construction and demolition waste management plan to the planning authority for agreement, prepared in accordance with the Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects published by the Department of the Environment, Heritage and Local Government in July 2006. This shall include details of waste to be generated during site clearance and construction phases and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material.</p> <p>Reason: In the interest of orderly development and sustainable waste management.</p>
18.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p>

	<p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
19.	<p>During the construction and demolition phases the proposed development shall comply with British Standard 5228 Noise Control on Construction and open sites Part 1, Code of practice for basic information and procedures for noise control.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
20.	<p>Prior to commencement of development, the developer or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended unless an exemption certificate shall have been applied for and been granted under section 97 of the Act.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
21.	<p>Proposals for a naming and numbering scheme for the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate signs, and house/apartment numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority.</p> <p>Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.</p>
22.	<p>a) The development, including all roads, footpaths, verges, public lighting, open spaces, surface water drains, attenuation infrastructure and all other services, as permitted under this order, shall be carried out and completed in accordance with the 'taking-in-charge' standards of the planning authority.</p>

	<p>(b) the areas of open space shown on the submitted drawings shall be reserved for such use and shall be levelled, contoured, soiled, seeded and landscaped in accordance with the detailed requirements of the planning authority. The open space shall be laid out and landscaped prior to the making available by the developer for occupation of any of the houses in the relevant phase of the development.</p> <p>(c) all the areas of public open space, as shown on the submitted drawings which are to be taken in charge, shall be maintained by the developer until the development is taken in charge by the local authority. When the estate is taken in charge, these open spaces shall be vested in the planning authority, at no cost to the authority, as public open space.</p> <p>Reason: In the interests of proper development, the timely provision of open spaces and in order to comply with national policy in relation to the maintenance and management of residential estates.</p>
23.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

24.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.</p>
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Barry O'Donnell
Planning Inspector

27th January 2023.