



An
Bord
Pleanála

Inspector's Report

ABP-315187-22

Development	Completion of multiple residential development approved under planning ref nos. 05/4780, 06/71954, 07/71842 and extension of duration permission approved under 10/70356 and 10/70357.
Location	Rockstown, Tievebane, Burnfoot, Lifford, P.O. Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	22/50958
Applicant(s)	Rockstown Development Ltd
Type of Application	Permission
Planning Authority Decision	Grant, subject to 15 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Odhran McLaughlin
Observer(s)	None

Date of Site Inspection

8th August 2023

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located between Burnfoot and Fahan at the base of the Inishowen Peninsula. This site lies to the south-west of the regional road (R238), which runs between these two settlements, and off the L3571. It is situated in an area of gently undulating countryside, which is punctuated by housing in the form of one-off dwelling houses, ribbon development, and a small housing cluster, known as Rockstown Park.
- 1.2. The site itself is of elongated form. It is rectangular in shape, but for the omission of one existing house plot towards its northern end, which has been developed to provide a dwelling house that is now occupied. This site extends over an area of 0.8 hectares. It is accessed from the north off the local road, and it has been developed insofar as an on-site access road extends as far as the completed dwelling house, and, to the south of this dwelling house, there are five partially completed dwelling houses, which are laid out in an informal row.
- 1.3. The site entrance has been formally laid out by walls and pillars. The initial portion of the access road is accompanied, on its western side, by a footpath and an area of grass, and, on its eastern side, by a sewage treatment plant, which serves the completed dwelling house. This road rises at a gentle gradient in a southerly direction. The western and eastern side boundaries of the site are denoted by hedgerows. The southern boundary is marked by a change in levels and the outcropping of rock. Within the site a change of levels occurs, too, between the house plots denoted as Nos. 3 and 4. This change is denoted by a retaining wall. The common boundary between house plot No. 3 and the completed dwelling house is denoted by a closely boarded timber fence.

2.0 Proposed Development

- 2.1. Under the proposal, as originally submitted, the multiple residential development of the site would be completed, i.e., the 5 no. partially completed dwelling houses would be completed and 1 no. dwelling house would be constructed on the roadside plot to the north of the completed dwelling houses, i.e., the existing grass area. Each dwelling house would be a dormer bungalow with a two-storey centrally placed return, and each would afford five-bed/ten-person accommodation over a floorspace

of 248.74 sqm. Under further information, the proposed dwelling house on the roadside plot was omitted.

- 2.2. The submitted site layout plan shows the continuation of the existing access road alongside house plots Nos. 3 – 7. This road would have a 6m wide carriageway with a 2m wide footpath on its western side. It would terminate in a turning head, and it would be accompanied in its eastern side by a linear strip of landscaped open space.
- 2.3. The submitted site layout plan also shows the existing sewage treatment plant, a pumping station, and an already constructed percolation area to the south of the site.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, permission for 5 no. rather than 6 no. dwelling houses was granted, subject to 15 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further information was requested concerning the following:

- Report advising on the structural suitability of the blockwork in-situ to be retained and used to support completion works.
- Sightlines with “y” distances of 160m to be available at the exit to the site, or survey of traffic speeds to be submitted to substantiate any concessionary dimension.
- Adequacy of on-site sewerage system to be demonstrated, and security fence to be proposed to enclose the WWTP. The proposed dwelling house nearest to the WWTP to be omitted.
- Part V obligations to be the subject of a preliminary agreement with the Housing Authority.

The applicant responded as follows:

- Existing blockwork to be demolished and replaced with blockwork that conforms to current standards.
- Under the parent permission (05/4780), sightlines with “y” distances of 68m were required and these sightlines are available.
- Details of WWTP disclosed including its 50 PE capacity. Security fence to be erected. Identified dwelling house omitted.
- The view is expressed that, as the application is for the completion of an existing development on foot of a parent permission, Part V obligations do not apply.

3.2.2. Other Technical Reports

- Donegal County Council
 - Area Engineer: No objection, subject to standard conditions.

3.3. Prescribed Bodies

No responses.

3.4. Third Party Observations

See grounds of appeal.

4.0 Planning History

- 04/4709: Outline and full proposals:
 - Outline application for 7 no. detached dwelling houses: Permitted for 6 no. dwelling houses, and
 - Full application for construction of road and services, including sewage treatment plant, pumping station, and percolation area: Permitted.
- 05/4780: Construction of 6 no. detached one-and-a-half storey four-bed dwelling houses, road, and services, including sewage treatment plant, pumping station, and percolation area: Permitted.

- 06/71954: Alterations to 05/4780: Relocation of sewage treatment plant and pumping station to landscaped open space area and construction of additional detached one-and-a-half storey four-bed dwelling house on lands thereby released, and relocation of percolation area further to the south: Permitted.
- 07/71842: Retention of second storey to single storey return to each of the 7 no. dwelling houses permitted under 05/4780 and 06/71954: Permitted.
- 09/70054: Construction of 10 no. semi-detached dwelling houses in-lieu of 5 no. partly constructed detached dwelling houses permitted under 05/4780, 06/71954, and 07/71842 and connected to sewage treatment plant permitted under 05/4780 and 06/71954: Permitted.
- 10/70356: Extension of time for 05/4780: Permitted until 21/10/15.
- 10/70357: Extension of time for 06/71954: Permitted until 21/10/15.
- 15/50511: Extension of time for 09/70054: Refused, on the grounds that to further extend the appropriate period would be contrary to Section 42(4) of the Planning and Development Act 2000 (as amended).
- PP/6404: Pre-application consultation was held on 10/12/21.

5.0 Policy Context

5.1. Development Plan

Under Maps 7.1.1 and 6.2.1 of the Donegal County Development Plan 2018 – 2024 (CDP), the site lies outside the settlements of Fahan and Burnfoot and in a rural area, which is recognised as being of high scenic amenity and under strong urban influence. Policy Objective RH-P-5 is applicable, and it states:

It is a policy of the Council to consider proposals for new one-off rural housing within Areas Under Strong Urban Influence from prospective applicants that have demonstrated a genuine need for a new dwelling house and who can provide evidence that they, or their parents or grandparents, have resided at some time within the area under strong urban influence in the vicinity of the application site for a period of at least 7 years. The foregoing is subject to compliance with other relevant policies of this plan,

including RH-P-1 and RH-P-2. New holiday home development will not be permitted in these areas.

The expanded case planner's report cited the following Policies and Objectives:

- *CS-O-14: To seek the effective resolution of unfinished residential development.*
- *CS-P-7: It is a policy of the Council to consider proposals 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.*
- *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.*
- *UB-O-10: To seek the effective resolution of unfinished residential development.*
- *WES-P-11: It is a policy of the Council to support and facilitate Irish Water to ensure that waste water generated is collected and discharged in a safe and sustainable manner that is consistent with the combined approach outlined in the latest Waste Water Discharge (Authorisation) Regulations and with the objectives of the relevant River Basin Management Plan and in doing so the following will apply:*

3. For multiple developments (or equivalent):

Such proposals must be appropriate and consistent with other objectives and policies within the Plan and in such cases the Council will assess proposals in the context of the objectives set out in the relevant River Basin Management Plan, and the terms of the relevant waste water discharge licence or wastewater certificate and having regard to existing and approved developments. Where there is inadequate existing capacity within a waste water treatment plant to accommodate new development the following will apply:

(a) Where the provision of capacity is imminent and:

(i) There is an existing sewer with adequate hydraulic capacity, approval may be granted for an interim treatment plant that shall discharge treated effluent to the sewer. Immediately following the provision of the necessary treatment capacity the interim plant shall be decommissioned and the wastewater directed to the sewer. The conditions listed under (A) in Table 5.2.1 below will apply.

(ii) There is no existing sewer, interim approval may be granted for a treatment plant where a license to discharge the treated effluent to the receiving environment is obtained. The conditions listed under (A) in Table 5.2.1 below will also apply.

(b) Where the provision of capacity is not imminent, development will in general not be permitted, however:

(i) Where there is an existing sewer or waste water discharge in the adjacent area consideration will be given to the provision of waste water treatment capacity by a developer provided that the treatment plant has the capacity to serve the proposed, existing, and approved development to a substantial degree. The conditions listed under (B) in table Table 5.2.1 below will apply.

(ii) Where there is no existing sewer and (b)(i) does not apply approval may be granted for a treatment plant to serve the development where a licence to discharge the treated effluent to the receiving environment is obtained. The conditions listed under (C) in table Table 5.2.1 below will apply:

Table 5.2.1: Requirements for Waste Water Treatment for Multiple Developments

Criteria	Details of requirements
(A)	<ul style="list-style-type: none"> ♣ Treatment plant must provide a minimum of secondary treatment and must be sized to accommodate all properties within the development. ♣ The system must be designed for easy connection to the proposed public sewer and connection to the public sewer must be carried out immediately following commissioning of the public wastewater treatment facility. ♣ Evidence of a maintenance agreement with the supplier of the temporary treatment unit must be submitted to the planning authority. ♣ The temporary treatment unit shall be installed and commissioned by the supplier. ♣ Temporary treatment unit systems shall be selected, installed, operated and maintained in accordance with the guidance set out in Wastewater Treatment Manuals, Treatment Systems for Small Communities, Business, Leisure Centres and Hotels published by the Environmental Protection Agency. ♣ The specification of the temporary wastewater treatment unit must be approved by the Planning Authority.

<p>♣ <i>Development Charges in accordance with the Development Contribution Scheme will be payable.</i></p> <p>♣ <i>Waste water treatment infrastructure shall be in place, operational, and with adequate capacity, prior to any part of the development being occupied.</i></p>
<p>(B) ♣ <i>The location, siting, design, construction, installation and commissioning of treatment plant, outfall and other necessary infrastructure must be to the approval of the planning authority.</i></p> <p>♣ <i>Treatment process must be adequate to ensure that the discharge will meet the requirements of the combined approach as defined in the Waste Water Discharge (Authorisation) Regulations 2007 (or any amendment regulations).</i></p> <p>♣ <i>Applicant must reach agreement with Donegal County Council and Irish Water in respect of sharing the capital costs and also of sharing any operation and maintenance costs incurred for the treatment plant in the period prior to its taking in charge.</i></p> <p>♣ <i>Waste water treatment infrastructure shall be in place, operational, and with adequate capacity, prior to any part of the development being occupied.</i></p>
<p>(C) ♣ <i>Treatment unit systems shall be selected, installed, operated and maintained in accordance with the guidance set out in Wastewater Treatment Manuals, Treatment Systems for Small Communities, Business, Leisure Centres and Hotels published by the Environmental Protection Agency and also to the approval of the Planning Authority.</i></p> <p>♣ <i>Evidence of a maintenance agreement with the supplier of the temporary treatment unit must be submitted to the planning authority.</i></p> <p>♣ <i>Development Charges in accordance with the Development Contribution Scheme will be payable.</i></p> <p>♣ <i>Waste water treatment infrastructure shall be in place, operational and with adequate capacity, prior to any part of the development being occupied.</i></p>

5.2. Natural Heritage Designations

- Lough Swilly SAC (002287)

- Lough Swilly SPA (004075)

5.3. EIA Screening

Under Item 10(b)(i) and (iv) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2022, where more than 500 dwelling units would be constructed or where a site of more than 20 hectares would be developed the need for a mandatory EIA arises. The proposal, as revised, is for the development of 5 dwellings on a 0.8-hectare site. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall well below the relevant thresholds, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- The description of the proposal is to complete multiple housing units, which were permitted over 15 years ago when, under certain circumstances, the CDP countenanced multiple housing units in the countryside. Under further information, the applicant confirmed that the existing walls of these units would need to be rebuilt, and so the nature of the proposal is not one of completion but demolition and reconstruction above foundation level. The application should have been re-advertised on this basis.

Citation of Policy UB-P-17 and Objective UB-O-10 is mis-placed as these relate to urban housing, whereas the site lies within a rural area under strong urban influence. The proposal would be contrary to CDP policies for this rural area.

- The appellant states that WWTS, pumping station, and percolation area were provided in and around 24th March 2022. No permission was in place to authorise such works. The proposal should therefore have been for the retention of these works.

CDP policies prohibit WWTSS for multiple housing units in the countryside. The existing dwelling house on the site should be provide with a septic tank and percolation area to serve it alone.

- Policy RH-P-5 allows for the consideration of one-off housing in rural areas under strong urban influence not multiple housing units. If permitted, then this proposal would establish an adverse precedent.
- Permissions for the site date from earlier CDPs, which have long since been superseded. Elsewhere in the County, instances of the non-renewal of earlier permissions exist. The current proposal is similar to these, and so, if it is permitted, then legal challenges from applicants previously denied may arise.
- The proposal is for backland development on a rural site, something which the current CDP does not allow.
- It is unreasonable for the PA to consider, on the basis of only one completed dwelling house, that the site is substantially completed.

The current CDP does not allow for superseded policies from earlier CDPs to be relied upon to justify applications such as the current one.

- The percolation area is c. 300m from the European sites at Inch, and there is a hydrological link between this area and these sites. Accordingly, a Stage 2 AA should have been undertaken.
- The PA's acceptance of earlier permitted sightlines is misplaced as these do not conform to current CDP standards. In this respect, the case planner's view that the road is lightly trafficked is disputed, by reference to existing traffic generating development along it. Road safety is thus at stake here.
- Given that the proposal is in effect for new development, Part V obligations should not be waved, but met.

6.2. Applicant Response

None

6.3. Planning Authority Response

- The PA wants the issue of the substantially completed but unfinished dwelling houses on the site, which have been constructed in accordance with previous permissions, to be resolved.
- Comments with respect to works having been carried out on site to complete sewerage arrangements after permissions had expired come under the provisions of Section 40(2) of the Planning and Development Act 2000 (as amended).
- The PA's permission is based not on Policy Objective RH-P-5, but CS-P-7, which was cited in the case planner's expanded report. Due to an administrative error, this report was only forwarded to the Board, as part of the PA's response to the applicant's grounds of appeal.
- The PA undertook a Stage 1 screening for AA and concluded that, in the absence of a direct hydrological link with any European site, the need for Stage 2 AA does not arise.
- The access point, including sightlines, and on-site access road have been provided in accordance with earlier permissions.

6.4. Observations

None

6.5. Further Responses

The PA's response was the subject of Section 131 exercise, which yielded the following response from the appellant.

- Were it not for the appeal, the final PA report would not have been made public.
- Attention is drawn to permitted application 09/70054, which superseded permitted application 05/4780 and amendments to it under 06/71954 and 07/71842. The view is expressed that the subsequent extension of time granted to the parent permission and its amendments were made in error.

Accordingly, the applicant's reliance now on the parent permission is misplaced.

- Attention is drawn to the applicant's further information response that the dwelling houses would have to be effectively rebuilt. Accordingly, the applicant intends to demolish the five detached dwelling houses, in place of the ten semi-detached dwelling houses which were permitted under 09/70054, and to rebuild the five with new materials. Accordingly, the proposal should not be treated as finishing an existing scheme, but as new housing, which falls to be assessed under current policies and standards.
- The view is expressed that, if the PA was serious about the site's completion, then it should have been the subject of a funding request when monies were available for ghost estates following the Celtic Tiger era.

7.0 **Assessment**

7.1. I have reviewed the proposal in the light of the Donegal County Development Plan 2018 – 2024 (CDP), the planning history of the site, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Planning history and planning policy,
- (ii) Development standards,
- (iii) Traffic, access, and parking,
- (iv) Water, and
- (v) Appropriate Assessment.

(i) Planning history and planning policy

7.2. The planning history of the site indicates that there are currently no extant permissions pertaining to it. The partially completed dwelling houses in-situ are consistent with those which were permitted under the parent permission 05/4780 for 6 no. dwelling houses, i.e., the 5 no. on the site and the 1 no. completed one surrounded by the site, and the subsequently permitted amending applications 06/71954 and 07/71842. (Under an earlier hybrid application 04/4709, outline

permission was granted for 7 no. dwelling houses and full permission was granted for the construction of a road and the installation of services, including a sewage treatment plant, pumping station, and percolation area).

- 7.3. The appellant considers that the 5 no. pairs of semi-detached dwelling houses permitted under 09/70054 should be regarded as superseding the parent permission and its amendments. However, there is no evidence that this permission was implemented, i.e., its mere existence in the past did not override its predecessors, and the partially constructed dwelling houses on site, along with the completed one on the adjoining house plot, are all designed to be detached rather than semi-detached. Furthermore, under 15/50511, an application to extend the duration of the permission granted to 09/70054 was refused, as previous time extensions for the parent permission had been granted, and so a further one was regarded as contrary to the five-year limit on time extensions imposed by Section 42(4) of the Planning and Development Act, 2000 (as amended). Accordingly, the PA did not view 09/70054 as superseding the parent permission. Indeed, an advisory note attached to the permission granted to 09/70054 stated that it would expire at the same time as the parent permission, i.e., 13th September 2010.
- 7.4. As an unfinished housing scheme from the Celtic Tiger era, it is perhaps surprising that this scheme was not addressed earlier under the Government's "Managing and Resolving Unfinished Housing Developments: Guidance Manual". Likewise, the site is not identified under the National Survey of Unfinished Housing Developments 2020. Nevertheless, the approach of the PA is to regard the unfinished housing scheme as one that comes within the ambit of the CDP's Core Strategy, as expressed in Objective 14, "To seek the effective resolution of unfinished residential development", and Policy 7, "...to consider proposals 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."
- 7.5. The case planner's revised report of 19th July 2022 contends that, while the site does not lie within the CDP's settlement boundaries of nearby Fahan and Burnfoot (both of which are Layer 3 rural towns in the County's settlement hierarchy), the proposed completion of the unfinished housing scheme upon it can still be regarded as coming within the ambit of the CDP's Core Strategy, as cited above.

- 7.6. The case planner did not incorporate into his report the view of his colleague, in an email dated 19th July 2022, that the site could be regarded as being within “a recognised settlement” due to surrounding social infrastructure, e.g., church, school, hall, shops, and social housing. He thereby appeared to attached importance to the site being within a “settlement” for its proposed completion to be accepted as coming within the ambit of the CDP’s Core Strategy.
- 7.7. I have reviewed the Core Strategy. I do not consider that it ties either CS-O-14 or CS-P-7 to sites that are within its settlement hierarchy. It simply comments, under the heading of “The approach to housing land supply”, “that the legacy of unfinished housing estates and cost as regards resolution is not repeated.”
- 7.8. The appellant points out that the site lies within a rural area under strong urban influence, and so, under the current CDP, if the proposed housing scheme were to be proposed today, then it would be refused in principle. The appellant also points out that, under further information, the applicant indicated that “Blockwork will be demolished and new blockwork erected to include increased cavities, door widths, etc., to current regulations.” He, therefore, contends that far from being completed, the housing scheme needs to be demolished to foundation level and rebuilt. The proposal should, therefore, have been re-advertised in the basis of a description that expresses this reality.
- 7.9. During my site visit, I observed that, while no blockwork appeared to have been demolished, the partial removal of timber floor joists has been undertaken, presumably because their prolonged exposure to the elements has rendered them structural unsound for their intended purpose.
- 7.10. I recognise the validity of the appellant’s comments concerning the current CDP and the normal approach it lays down for the assessment of proposed rural housing. I recognise, too, that, in the light of the applicant’s further information, *prima facie* the nature and extent of the proposal does not appear to have been captured in its description. While completion projects can entail a degree of demolition and rebuilding works, the applicant’s further information response appears to signal that the walls of the partially completed dwelling houses would need to be entirely demolished and rebuilt to a contemporary specification. While such a contemporary specification may relate more to matters within the ambit of the building regulations,

any implications for the elevations and floor plans of the proposal have not been made explicit. (A comparison of submitted drawing no. 1021/PL/002 with its predecessors indicates only the addition of insulation).

- 7.11. I note that the applicant's further information was the subject of a public consultation exercise. However, this exercise did not entail a revised/amplified description of the proposal. I note, too, the need for greater clarity as to the continuities and discontinuities that would arise between the current proposal and its predecessors at the level of detail.
- 7.12. I, therefore, conclude that, notwithstanding the planning history of the site and the CDP's Core Strategy Objective 14 and Core Strategy Policy 7, insufficient information has been submitted to allow the Board to fully assess the proposal.

(ii) Development standards

- 7.13. The proposal, as revised, is for the completion of five dwelling houses, which have been partially constructed. These dwelling houses have been laid out in an informal row. Their siting and footprints have been established on-site. Likewise, their size and design would reflect that which was envisaged and permitted under previous, now expired, permissions for the site. Essentially, each dwelling house would be of dormer bungalow form with a centrally placed two-storey return, and each would afford five-bed/ten-person accommodation with a floorspace of 248.74 sqm.
- 7.14. The proposed dwelling houses would be served by private open space and communal landscaped open space along the eastern and southern boundaries of the site. The depth of the rear gardens would vary, and in house plots nos. 5, 6, and 7, it would be shallow. The hedgerow along the western boundary of the site is mature and relatively high. Consequently, the combination of these shallow depths and the proximity of this hedgerow would require attention, insofar as the hedgerow would need to be trimmed back and included within a comprehensive landscaping scheme for the site. Additionally, house plot no. 7 is accompanied by significant rock outcropping in its southern embankment, which should be addressed under such a landscaping scheme.
- 7.15. The status and future maintenance of the communal landscaped open space should also be addressed under a comprehensive landscaping and management scheme for the site.

7.16. I conclude that, subject to a comprehensive landscaping and management scheme for the site, the proposal would afford a satisfactory standard of amenity to future residents.

(iii) Traffic, access, and parking

7.17. Under the proposal, traffic would be generated during the construction and operational phases of the site. On the original site one dwelling house has been completed and is now occupied. On the remainder of this site, i.e., the current application site, five dwelling houses are proposed for completion. Given that the original site was granted permission for six dwelling houses under the parent permission, overall traffic generation would be comparable with that which was originally envisaged.

7.18. Access to the site has been provided by means of a formally laid out site entrance from the L3571. The accompanying on-site access road has been provided as far as the completed and occupied dwelling house on house plot no. 2. This access road has been constructed to base course level and it is accompanied by a footpath on its western side. Under the proposal, it would be extended southwards to serve the remaining house plots. The future status of this road is unclear, i.e., would it be “taken-in-charge” or would it be managed privately, and, if so, the details of any envisaged private management company.

7.19. Under further information, the PA sought sightlines at the site entrance with “y” distances of 160m or justification for any concessionary “y” distance based on a survey of traffic speeds. The applicant responded by stating that a “y” distance of 68m was allowed under the parent permission and that this is available. The PA accepted this position.

7.20. During my site visit, I observed that, whereas 68m would appear to be available to the west, this dimension would only be available to the east if roadside vegetation was cut back. No agreement with the adjoining landowner to ensure that such maintenance of roadside vegetation occurs has been submitted by the applicant.

7.21. During my site visit, I also observed that the L3571 is of meandering form, and it rises at an appreciable gradient to the west of the site entrance. Under Table 3 to Appendix 3 of the CDP, speeds of 50 kmph would prompt a “y” distance of 70m and speeds of 80 kmph would prompt one of 160m. The value of a survey of traffic

speeds would be that a “y” distance reflective of actual speeds could be established, which may lie between 50 and 80 kmph.

- 7.22. The PA’s position appears to accept that, with respect to sightlines, those originally envisaged can be accepted. However, it does not appear to have adopted the same approach with respect to footpath provision. Under the parent permission, a footpath was to have been provided along the northern side of the L3571, between the site and a point further to the east where there is an existing footpath. In turn this footpath is continuous with a footpath on the south-western side of the R238. Between them, these footpaths afford pedestrian access to some of the social infrastructure that I refer to under the first heading of my assessment. At the application stage and in the PA’s permission no reference is made to the provision of this link footpath, which was conditioned under the parent permission.
- 7.23. Since the parent permission was granted, the importance of promoting sustainable modes of transport, such as walking, has only increased. The need, therefore, exists to address the feasibility of providing either this link footpath or some comparable measure.
- 7.24. The submitted site layout plan shows the dwelling houses in the semi-detached format that was permitted under 09/70054, i.e., each house plot is served by two driveways and there is fence line shown dissecting each rear garden. The site layout plan should reflect the detached dwelling houses that are now proposed for completion. Presumably, each dwelling house would be served by a single driveway and a continuous rear garden. Under such a scenario there would be scope to provide the requisite two car parking spaces under Table 6 of Appendix 3 of the CDP.
- 7.25. I conclude that the need exists to ensure that the site entrance would be capable of being accessed/egressed safely, and so the sightlines available to it need to be demonstrably of the required length to ensure this objective. I, likewise, conclude that the need to ensure adequate pedestrian facilities are in-situ has only increased in importance since the parent permission, and so they need to be addressed.

(iv) Water

- 7.26. Under the proposal, the dwelling houses would be served by a connection to the public water mains. The submitted site layout plan shows such a connection in-situ along with an installed on-site water supply network to each house plot.
- 7.27. Under the proposal, the site would be served by a stormwater drainage network, which would discharge to a watercourse. The submitted site layout plan shows such a connection in-situ along within an installed on-site stormwater drainage network. Notation on this plan states that an existing roadside stream enters a culvert to the east of the discharge point from the site, the implication being that this discharge point connects with the culvert.
- 7.28. Under Flooding Policy 5 of the CDP, the PA promotes the use of Sustainable Urban Drainage Systems (SuDS). No SuDS is proposed. *Prima facie* the opportunity would exist to install a suitably sized attenuation tank, hydro-brake, and oil interceptor in the grassed area to the west of the site entrance.
- 7.29. The OPW's flood maps do not indicate that the site is the subject of any formally recognised flood risk.
- 7.30. Under the proposal, the proposal would be served by a waste water treatment plant (WWTP) and pumping station, which have been installed in the north-eastern corner of the site. Originally, these items were to have been installed in the grassed area on the opposite site of the site entrance. However, under 06/71954, their re-siting was permitted, and they were subsequently installed therein. Under further information, the applicant has undertaken to erect a security fence around them.
- 7.31. The aforementioned pumping station would ensure that the discharge from the WWTP is conveyed to a percolation area that has been installed in a position further to the south of the site than originally proposed. Again, this re-siting was permitted under 06/71954. At the application stage, the appellant submitted photographs of its installation in March 2021. She states that, as this date fell well outside the life of the relevant planning permission, it was unauthorised development. However, the PA has cited Section 40(2)(a)(iv) of the Planning and Development Act, 2000 (as amended), which states that the expiry of planning permissions does not apply "in the case of a development comprising a number of buildings of which only some have been completed, in relation to the provision of roads, services and open spaces

included in the relevant permission and which are necessary for or ancillary or incidental to the completed buildings.”

7.32. I note the PA’s response. I note, too, the absence of any confirmation from a suitably qualified person that its installation was carried out properly. Without such confirmation, I am unable to conclude that this percolation area would be capable of serving the proposal satisfactorily.

7.33. The case planner draws attention to the CDP’s Water and Environmental Services (WES) Policy 11, which under Item 3 addresses multiple developments, and which, under Item (b)(ii), addresses situations wherein there is no public foul water sewer available. The resulting requirements for WWTPs are set out in Table 5.2.1, under Item C. These requirements are as follows:

♣ Treatment unit systems shall be selected, installed, operated and maintained in accordance with the guidance set out in Wastewater Treatment Manuals, Treatment Systems for Small Communities, Business, Leisure Centres and Hotels published by the Environmental Protection Agency and also to the approval of the Planning Authority.

♣ Evidence of a maintenance agreement with the supplier of the temporary treatment unit must be submitted to the planning authority.

♣ Development Charges in accordance with the Development Contribution Scheme will be payable.

♣ Waste water treatment infrastructure shall be in place, operational and with adequate capacity, prior to any part of the development being occupied.

7.34. Under further information, the applicant submitted the specification of the WWTP and the pumping station. The former is a 50 PE Tricel WWTP, and the latter is a S50DIV pumping station.

7.35. Under the original application, a copy of a 5-year maintenance agreement was submitted for the WWTP, the pumping station, and the percolation area. This agreement is dated 18th May 2021 and it is valid until November 2026. The agreement undertakes to carry out inspections twice a year in May and November. Clearly, its continuation after November 2026 would be needful.

- 7.36. The case planner confirmed in his report that development levies were previously paid by the applicant in compliance with the relevant condition attached to the parent permission granted to 05/4780, and so no further development levies are deemed to be necessary.
- 7.37. While I am unable to confirm conclusively from my site visit that the WWTP, the pumping station, and percolation area are currently operating, a condition could be attached to any permission requiring that such operation occur prior to the first occupation of the dwelling houses on the site.
- 7.38. I conclude that the installation of SuDS is necessary for the site. I conclude, too, that confirmation is needed that the percolation area has been installed properly.

(v) Appropriate Assessment - Screening

(a) Compliance with Article 6(3) of the Habitats Directive

- 7.39. 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.

(b) Background on the application

- 7.40. A screening report for appropriate assessment was not submitted with this application/appeal case. Therefore, this screening assessment has been carried out *de-novo*.

(c) Screening for appropriate assessment – tests of likely significant effects

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

(d) Brief description of the development

- 7.43. The proposed development is for the completion of an unfinished residential development on the site, which comprises 5 no. partially completed dwelling houses, an access road, services, and a strip of landscaped open space.
- 7.44. Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:
- Construction related – uncontrolled surface water/silt/construction related pollution, and
 - Operational related – uncontrolled surface water run-off with possible risk of hydrocarbon pollutants.
 - Operational related – discharge of percolation area to groundwater with possible risk of pollution.

(e) Submissions and observations

- 7.45. The appellant expresses the view that, due to the proximity of the percolation area to the nearest European sites, i.e., c. 0.3km, a Stage 2 NIS should have been sought. The PA's screening exercise concluded that, due to the dilution factor provided by an c. 1km long hydrological link between the site and the nearest European sites, no significant effect upon the water quality in this site would be likely.

(f) European sites

- 7.46. The development site is not located in or immediately adjacent to a European site. The closest European sites are Lough Swilly SAC (002287) and Lough Swilly SPA (004075), which are both within c. 0.5km of the site and c. 0.3km of the percolation area.
- 7.47. The qualifying interests of Lough Swilly SAC are set out below along with their conservation objectives, i.e., To maintain (M) or restore (R) their favourable conservation condition.
- Estuaries [1130] – M
 - Coastal lagoons [1150] – R
 - Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330] – R

- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410] – R
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0] – R
- *Lutra lutra* (Otter) [1355] – R

7.48. The qualifying interests of Lough Swilly SPA are set out below along with their conservation objectives, i.e., To maintain (M) or restore (R) their favourable conservation condition.

- Great Crested Grebe (*Podiceps cristatus*) [A005] – M
- Grey Heron (*Ardea cinerea*) [A028] – M
- Whooper Swan (*Cygnus cygnus*) [A038] – M
- Greylag Goose (*Anser anser*) [A043] – M
- Shelduck (*Tadorna tadorna*) [A048] – M
- Wigeon (*Anas penelope*) [A050] – M
- Teal (*Anas crecca*) [A052] – M
- Mallard (*Anas platyrhynchos*) [A053] – M
- Shoveler (*Anas clypeata*) [A056] – M
- Scaup (*Aythya marila*) [A062] – M
- Goldeneye (*Bucephala clangula*) [A067] – M
- Red-breasted Merganser (*Mergus serrator*) [A069] – M
- Coot (*Fulica atra*) [A125] – M
- Oystercatcher (*Haematopus ostralegus*) [A130] – M
- Knot (*Calidris canutus*) [A143] – M
- Dunlin (*Calidris alpina*) [A149] – M
- Curlew (*Numenius arquata*) [A160] – M
- Redshank (*Tringa totanus*) [A162] – M
- Greenshank (*Tringa nebularia*) [A164] – M
- Black-headed Gull (*Chroicocephalus ridibundus*) [A179] – M
- Common Gull (*Larus canus*) [A182] – M
- Sandwich Tern (*Sterna sandvicensis*) [A191] – M
- Common Tern (*Sterna hirundo*) [A193] – M

- Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395] – M
- Wetland and Waterbirds [A999] – M

(g) Identification of likely effects

- 7.49. The proposed development could as a result of pollutants borne by surface water run-off from the site into a watercourse, which forms an c. 1km long hydrological link, affect the water quality in the European sites. Likewise, the proposed development could as a result of the percolation area's discharge to groundwater, which may be linked to the European sites, affect the water quality in these European sites. A diminution in water quality may adversely affect the food chain of the qualifying interests, which are either mammals or birds.
- 7.50. The proposal does not include a construction management plan, which outlines how surface water run-off during the construction phase would be controlled in accordance with best practice. Accordingly, the risk would exist that, during the construction phase, surface water borne pollutants would discharge into the watercourse that flows into the European sites.
- 7.51. The proposal does not include a SuDS, i.e., the installation of an attenuation tank, hydro-brake, and oil interceptor. Accordingly, the risk would exist that, during the operational phase, surface water borne pollutants would discharge into the watercourse that flows into the European sites.
- 7.52. The percolation area, which would serve the proposed development, has been installed, although confirmation that it has been installed satisfactorily has not been submitted. Its maintenance is the subject of an agreement that expires in 2026. This percolation area would discharge to groundwater. The intervening land slopes downwards at a gentle gradient to the European sites. Normally groundwater movement mirrors the topography of the ground above. The presence or absence of a hydrological link between the percolation area and the European sites via groundwater has not been the subject of a hydrological assessment.
- 7.53. In the light of the foregoing paragraph, I am unable to conclude that the percolation area would not pose a risk of pollutants being conveyed to the European sites via groundwater.

7.54. I am not aware of any other proposed developments, which in combination with the proposed development, would affect the European sites.

(h) Mitigation measures

7.55. No measures designed or intended to avoid or reduce any harmful effects of the project on the European sites have been relied upon in this screening exercise.

(i) Screening determination

7.56. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects, would not result in adverse effects on the integrity of European sites 002287 and 004075, in view of the site's conservation objectives.

- As submitted, the proposed development is not the subject of a construction management plan, which addresses the control of surface water run-off from the site into a watercourse that flows into the European sites. Likewise, as submitted, the proposed development is not the subject of a Sustainable Drainage System. Thus, during the construction and operational phases, water borne pollutants from the site may be conveyed to the European sites, thereby affecting water quality.
- As submitted, the proposed development is not the subject of any confirmation that the percolation area has been properly installed, and this percolation area is the subject of a maintenance agreement, which expires in 2026. Thus, during the operational phase, water borne pollutants from the percolation area may be conveyed to the European sites, thereby affecting water quality.

In such circumstances, the Board is precluded from granting planning permission.

8.0 Recommendation

That permission be refused.

9.0 Reasons and Considerations

1. Having regard to the original application and further information, insufficient information has been submitted by the applicant to enable the Board to fully assess the proposal. Specifically, the following information is either unclear or outstanding:

- The nature and extent of the proposal, including demolition and rebuilding works, and any changes to elevations and floor plans necessitated by the requirements of other codes.
- A comprehensive landscape and management plan for the site.
- A traffic speed survey of the L3571 and sightlines at the site entrance of the requisite length, along with an agreement to manage roadside vegetation.
- The intended status of the on-site access road.
- A link footpath along the northern side of the L3571 between the site and the existing footpath to the east or a comparable pedestrian facility.
- A site layout that coheres with the remainder of the proposal for the completion of detached dwelling houses.
- A construction management plan, which addresses the control of surface water run-off.
- A Sustainable Drainage System for the site, including an attenuation tank, hydro-brake and oil interceptor.
- Confirmation from someone bearing a relevant qualification and experience that the percolation area has been properly installed.
- Details of the future on-going maintenance arrangements for the waste water treatment plant, pumping station, and percolation area.

In these circumstances it would be premature for the Board to determine the application/appeal, as, potentially, to do so would be seriously injurious to the amenities of future residents, would risk water quality in local watercourses

and water bodies, and would jeopardise road safety. The proposal would thus be contrary to the proper planning and sustainable development of the area.

2. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects, would not result in adverse effects on the integrity of European sites 002287 and 004075, in view of the site's conservation objectives.
 - As submitted, the proposed development is not the subject of a construction management plan, which addresses the control of surface water run-off from the site into a watercourse that flows into the European sites. Likewise, as submitted, the proposed development is not the subject of a Sustainable Drainage System. Thus, during the construction and operational phases, water borne pollutants from the site may be conveyed to the European sites, thereby affecting water quality.
 - As submitted, the proposed development is not the subject of any confirmation that the percolation area has been properly installed, and this percolation area is the subject of a maintenance agreement, which expires in 2026. Thus, during the operational phase, water borne pollutants from the percolation area may be conveyed to the European sites, thereby affecting water quality.

In such circumstances, the Board is precluded from granting planning permission.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Hugh D. Morrison

Inspector

18th September 2023