



An
Bord
Pleanála

Inspector's Report ABP-315404-22

Development	Completion of a dwelling house and all associated site works including on-site sewage treatment.
Location	Dundoan Lower, Downings, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	22/50393
Applicant(s)	Daniel Love
Type of Application	Permission
Planning Authority Decision	Grant, subject to 15 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Lorraine Thompson
Observer(s)	None
Date of Site Inspection	19 th October 2023
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located in Rosguill, 3.8km to the north north-east of Downies, and 1.1km to the north-east of the Mulroy Bay viewing point on the L-1032. This site lies at the end of a cul-de-sac off the L-10326-0. This cul-de-sac runs over a strip of undulating ground, which lies between higher, hilly lands to the south and lower, flatter lands to the north. It is accompanied by one-off dwelling houses/holiday homes. Inverbeg Bay, which is situated towards the mouth of Mulroy Bay, lies to the south-east of the site.
- 1.2. The site is of regular shape, and it extends over an area of 0.6 hectares. Part of the south-eastern boundary of the site abuts the shoreline with Inverbeg Bay. The north-western boundary adjoins an existing residential property at the end of the cul-de-sac. Access to the site is from the cul-de-sac and via the entrance and driveway within this property. The site slopes downwards from its north-western boundary to its south-eastern one at moderate gradients.
- 1.3. The site has been partially excavated and laid out to provide a platform for a partially completed bungalow towards the centre of the site. The base course for a driveway within the site, from the entrance gate in the north-western corner to the partially completed bungalow, has been laid. Elsewhere in the site two structures lie in positions adjacent to its western boundary. One is a chalet-like dwelling with a veranda on its southern, seaward side, and the other is a small storage shed. Both are in need of repair.

2.0 Proposed Development

- 2.1. Under the proposal, the existing partially completed bungalow on the site would be completed. As originally proposed, this bungalow (262 sqm) would have had a first floor in its roofspace, which would have facilitated an office, and a mezzanine floor, which would have been lit by a fully glazed south-eastern gable end. As revised, the first floor was omitted, as the roof pitch was reduced from 38 degrees to 31 degrees, although the fully glazed south-eastern gable end was retained. Under both versions of the bungalow, four-bed/eight-person accommodation would be provided.

2.2. Under the proposal, the existing driveway on the site would be completed. Surface water from the roof of the bungalow would drain to a soak pit, which would be sited adjacent to the southern corner of the bungalow, and a wastewater treatment system (WWTS) and a polishing filter would be sited in the north-eastern half of the site, i.e., to the rear of the bungalow. Existing site boundary treatments would be retained as at present.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, permission was granted, subject to 15 conditions. Condition No. 2 requires that glazing in the southern gable have horizontal headers only.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further information was requested as follows:

- Existing unauthorised structures and ancillary services to be removed.
- Dwelling house to comply with the CDP's advice on "Building a house in rural Donegal", e.g., first floor accommodation to be omitted and maximum ridge height to be 5.5m.
- Sightlines at site access point to be shown.
- Compliance with EPA Code of Practice (2021) to be confirmed.
- Revised NIS to explicitly address proposed WWTS.

The PA was satisfied with the further information which the applicant submitted.

3.2.2. Other Technical Reports

- Irish Water: No objection.

4.0 Planning History

- 98/1057: Dwelling house and septic tank: Permitted.
- PP6355 occurred on 10th November 2021.

5.0 Policy and Context

5.1. National Policy

- National Planning Framework
- Sustainable Rural Housing Guidelines

5.2. Development Plan

Under the Donegal County Development Plan 2018 – 2024 (CDP), the site is shown as lying within both a structurally weak rural area and an area of especially high scenic amenity. The centre-line of an identified view and prospect on Map 7.1.1 runs to the south-east of the site in a north-easterly direction from Mulroy Bay view point on the L1032.

In relation to the first designation of the site the following policies are of relevance:

- **RH-P-4:** *It is a policy of the Council to consider proposals for new one-off housing within structurally weak rural areas from any prospective applicants with a need for a dwelling house (urban or rural generated need), provided they demonstrate that they can comply with all 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.*
- **RH-P-1:** *It is a policy of the Council that the following requirements apply to all proposals for rural housing:*
 1. *Proposals for individual dwellings shall be subject to the application of Best Practice in relation to the siting, location and design of rural housing as set out in Appendix 4 and shall comply with Policy RH-P-2;*
 2. *Proposals for individual dwellings shall be sited and designed in a manner that enables the development to assimilate into the receiving landscape and*

that is sensitive to the integrity and character of rural areas as identified in Chapter 7 and Map 7.1.1 of this Plan. Proposals for individual dwellings shall also be located in such a manner so as not to adversely impact on Natura 2000 sites or other designated habitats of conservation importance, prospects or views including views covered by Policy NH-P-17;

3. Any proposed dwelling, either by itself or cumulatively with other existing and/or approved development, shall not negatively impact on protected areas defined by the North Western International River Basin District Plan;

4. Site access/egress shall be configured in a manner that does not constitute a hazard to road users or significantly scar the landscape, and shall have regard to Policy T-P-15;

5. Any proposal for a new rural dwelling which does not connect to a public sewer or drain shall provide for the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health and accords with Environmental Protection Agency codes of practice;

6. Proposals for individual dwellings shall be subject to the flood risk management policies of this Plan;

7. In the event of a grant of permission the Council will attach an occupancy condition which may require the completion of a legal agreement under S47 of the Planning and Development Act 2000 (as amended).

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

1. A proposed dwelling shall avoid the creation or expansion of a suburban pattern of development in the rural area;

2. A proposed dwelling shall not create or add to ribbon development (see definitions);

3. A proposed dwelling shall not result in a development which by its positioning, siting or location would be detrimental to the amenity of the area or of other rural dwellers or would constitute haphazard development;

4. A proposed dwelling will be unacceptable where it is prominent in the landscape; and shall have regard to Policy T-P-15;

5. A proposed new dwelling will be unacceptable where it fails to blend with the landform, existing trees or vegetation, buildings, slopes or other natural features which can help its integration. Proposals for development involving extensive or significant excavation or infilling will not normally be favourably considered nor will proposals that result in the removal of trees or wooded areas beyond that necessary to accommodate the development. The extent of excavation that may be considered will depend upon the circumstances of the case, including the extent to which the development of the proposed site, including necessary site works, will blend in unobtrusively with its immediate and wider surroundings (as elaborated below).

In relation to the second designation of the site the following policy is of relevance:

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

In relation to the identified view and prospect the following policy is of relevance:

- **NH-P-13:** *It is a policy of the Council to protect, conserve and manage landscapes having regard to the nature of the proposed development and the degree to which it can be accommodated into the receiving landscape. In this regard the proposal must be considered in the context of the landscape classifications, and views and prospects contained within this Plan and as illustrated on Map 7.1.1: 'Scenic Amenity'.*
- **NH-P-17:** *It is a policy of the Council to seek to preserve the views and prospects of special amenity value and interest, in particular, views between public roads and the sea, lakes and rivers. In this regard, development*

proposals situated on lands between the road and the sea, lakes or rivers shall be considered on the basis of the following criteria:

- *Importance value of the view in question.*
- *Whether the integrity of the view has been affected to date by existing development.*
- *Whether the development would intrude significantly on the view.*
- *Whether the development would materially alter the view. In operating the policy, a reasonable and balanced approach shall be implemented so as to ensure that the policy does not act as a blanket ban on developments between the road and the sea, lakes and rivers.*

Policy T-P-15, which is cited above, reads as follows: *It is a policy of the Council to require that all development proposals comply with the Development and Technical Standards set out in Appendix 3 to promote road safety.*

5.3. **Natural Heritage Designations**

- Mulroy Bay SAC (002159)
- Tranarossan and Melmore Lough SAC (000194)
- Hornhead to Fanad Head SPA (004194)

5.4. **EIA Screening**

Under Item 10(b)(i) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2023, where a proposal is for more than 500 dwelling units the need for a mandatory EIA arises. The proposal is for one dwelling unit. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall well below the relevant threshold, 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 appellant expresses the view that the PA has not properly engaged with her letter of objection at the application stage.
- The PA's approach to the current proposal is misguided insofar as it seeks to "defend" its earlier permission (98/1057) on the site.
- The PA's assessment should have been *de nova*, and so changes in the policy context, e.g., with respect to landscape designations and the presence of European sites, should be recognised. Instead, the PA's overarching consideration was the completion of the partially constructed dwelling house on the site, whereas the overarching consideration should have been the current CDP. In this respect, the presence of abandoned wall steads is irrelevant, and attention is drawn to the incidence of comparable wall steads throughout the County.
- The appellant questions whether the proposed dwelling house would be the applicant's permanent residence as distinct from holiday home. The enforceability of any condition requiring the former and not the latter is likewise questioned.

While the application is accompanied by a letter from a councillor vouching for the applicant's *bona fides*, such letters are allegedly not invariably accepted by the Planning Office.

- Notwithstanding the changes to the design secured under further information, the view is expressed that the design of the proposed dwelling house is dictated by the existing wall steads, and it fails to reflect the vernacular sufficiently, which is a pre-condition for design in an area of especially high scenic amenity.

Notwithstanding the changes to the design secured under further information, concern is expressed that the first floor may be used in conjunction with glazing in the south-facing gable.

Attention is drawn to Policy NH-P-6 of the CDP, which states that only developments of strategic importance, along with other limited developments, should be permitted in areas of especially high scenic amenity. The proposal would contravene this Policy.

The proposal would also contravene Policies NH-P-7, 8 & 9.

- The proposal would contravene Appendix 4 of Part B of the CDP, i.e., the PA's "Guide to Location, Siting & Design in Rural Co. Donegal".

Particular attention is drawn to the PA's landscaping condition, which seeks to "integrate the proposal" by means of tree planting, in a windblown shoreline situation devoid of trees and where the prospects for trees are questionable.

The risk of adverse precedent is cited.

- Access to the site is by means of a right of way through the appellant's residential property. Under the proposal, the access point from the local road would become a multi-user one, and yet the sightlines, conditioned by the PA, are not in the applicant's gift to secure.

The proposed access arrangements would contravene Section 2.10 of Appendix 3 of Part B of the CDP, which addresses sightlines.

- The proposed WWTS would threaten both public health and the adjacent European sites. In this respect, attention is drawn to the following concerns:
 - The shallow depth of overburden available,
 - The aquifer is poor,
 - Constraints imposed by the proximity of the shoreline,
 - The hydrological path from the site to the sea,
 - Dependence upon expert maintenance of the WWTS,
 - The importance of diverting surface water run-off away from the percolation area,
 - Unknown drainage arrangements for the existing dwelling, and uncertainty that it would be removed under the proposal, and
 - The applicability of the precautionary principle.

- Attention is drawn to the multiplicity of mitigation measures in the applicant's NIS, all of which would need to be undertaken to ensure that adjacent European sites are not adversely affected. Concern is expressed over what is considered to be an inordinate risk that all the relevant measures would, in practice, be undertaken.

6.2. Applicant Response

The applicant responds to the appellant's grounds of appeal on a thematic basis, which I summarise below.

Validity of parent permission

- Application 98/1052 for a four-bed dwelling houses on the site was granted. This application and its subsequent permission and partial implementation were not challenged and so they were all valid.

Housing need of the applicant

- The applicant has submitted a completed supplementary rural housing application, and his *bona-fides* has been accepted by the PA.
- The applicant provides the following background information:
 - His family of origin and he resided in the Downings area between 1984 and 2001, and they resided on the site between 1994 and 2001.
 - Work on the permanent dwelling house ceased in 2001, as his family were required to relocate to Scotland for personal reasons.
 - The dwelling on the site was never used as a holiday home and it would be removed from the site under the current proposal.

Enforceability of conditions and the feasibility of carrying outworks in accordance with technical reports

- The applicant undertakes to comply with all the PA's conditions.
- Likewise, he undertakes to comply with his submitted technical reports for the proposal.

Sightlines

- The site access is the subject of multi-user usage at present regardless of the outcome of the current application.
- The submitted traffic survey illustrates that the local road is the subject of low levels of usage, and the submitted sightlines were accepted by the PA.

Suitability of the proposal to the site

- The key question is whether the site would be better served by a completed dwelling house or simply left as it is. The applicant favours the former view, while the appellant favours the latter view.
- Attention is drawn to the unusual nature of the proposal, i.e., it does not propose a new dwelling house, but the completion of a partially completed dwelling house. Accordingly, any risk of adverse precedent for new dwelling houses would not arise.
- Insofar as national and local policies promote the refurbishment of vacant properties, the current proposal would further this objective.

Architectural design

- Attention is drawn to the roadside view of the proposed dwelling house, which would not comprise the originally proposed glazed southern gabled elevation, and which would comprise strongly vernacular elements.
- Attention is also drawn to the PA's Condition 2(a), which seeks the removal of the glazing from within the forementioned gable. As the application has been appealed and the Board will undertake a *de nova* assessment, the applicant requests that this Condition be omitted, as the glazing at issue would add significantly to the architectural quality of the dwelling house.

6.3. Planning Authority Response

While the PA relies upon the case planners' reports, it does make the following points:

- Reliance upon conditions and compliance with them is not mis-placed.

- Confirmation that the applicant's *bona-fides* by way of compliance with Policy RH-P-4 is accepted.
- The PA acknowledges that the historic permission does not and should not lead to the automatic acceptance of the current proposal. On balance this proposal was accepted, due to the site's low-lying and sheltered location, and the opportunity that it affords to both remove unauthorised structures and ensure that any WWTS complies with the EPA's relevant Code of Practice 2021.

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

7.1. I have reviewed the proposal in the light of the National Planning Framework (NPF), the Sustainable Rural Housing (SRH) Guidelines, the Donegal County Development Plan 2018 – 2024 (CDP), relevant planning history, 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) Rural settlement policy,
- (ii) Landscape and visual impacts,
- (iii) Development standards,
- (iv) Access,
- (v) Water, and
- (vi) Appropriate assessment.

(i) Rural settlement policy

- 7.2. National Planning Objective 19 of the NPF makes a distinction between rural areas which are and which are not under urban influence. Within the latter rural areas, the provision of single housing in the countryside is to be facilitated based on siting and design criteria in CDPs and having regard to the viability of smaller towns and rural settlements.
- 7.3. Under the CDP, the site is shown as lying within a structurally weaker rural area. The applicant proposes to complete the partially constructed dwelling house on the site. He has thus completed a supplementary rural housing application form, in which he confirms that he has not previously received planning permission for a dwelling house on another site, and in which he confirms that the proposed dwelling house would be used as his primary, principal, and permanent residence, i.e., it would not be a second/holiday home. He also refers to his childhood links with Rosguill, and to how he has the opportunity to work remotely and so he and his family can relocate from Dublin. This completed form is accompanied by a letter from a councillor, which states that the applicant would comply with R-HP-4 of the CDP, as the dwelling house would be his permanent home.
- 7.4. The PA accepted the *bona-fides* of the above submissions, and it granted permission, subject to conditions, including Condition No. 3, which requires that the dwelling house be used by the applicant as his principal place of residence and not as a holiday home.
- 7.5. The appellant questions whether Condition No. 3 would be capable of being enforced in practice. The applicant undertakes to comply with the PA's conditions and the PA insists that reliance upon conditions is not mis-placed.
- 7.6. I consider that, in view of the site's location within a rural area which is not under urban influence and which is deemed to be structurally weaker, the proposal would come within the ambit of NPO 19 of the NPF and R-HP-4 of the CDP. Based on the submitted information from the applicant and his corresponding undertakings, I consider that the proposal would comply with the County's rural settlement policy. In this respect, it is critical that the dwelling house be used as the applicant's principal residence, and so such usage needs to be conditioned, in accordance with normal

planning practise. Subsequent compliance would be a matter for the PA, as the body responsible for planning enforcement.

(ii) Landscape and visual impacts

- 7.7. Under the CDP, the site lies within an area of especially high scenic amenity, and under Map 7.1.1, the centre-line of an identified view and prospect runs to its south-east in a north-easterly direction from Mulroy Bay view point on the L1032.
- 7.8. Policy NH-P-6 of the CDP states that, in especially high scenic amenity areas, developments that are provided for by policy elsewhere in this Plan shall be considered. Such developments include rural dwelling houses, such as the one currently proposed, which are subject to Policies RH-P-1 & 2 of the CDP, and, due to the identified view, Policies NH-P-13 & 17.
- 7.9. Under the proposal, the partially built dwelling house on the site would be completed. This dwelling house was permitted under 98/1057. The applicant envisages its completion, with some modifications, to its original design. As revised, it would be a bungalow of rectangular form under a double pitched roof. A subsidiary gabled element would project from the front elevation, which would face south-west, and it would incorporate a large corner window. The straight gabled ends to the main body of the bungalow would rise above the roofline, and the south-east facing gabled end would incorporate extensive glazing.
- 7.10. The site slopes at moderate gradients from the north-west to the south-east to the foreshore beyond. To form a level site for the proposed bungalow, this site has been partially excavated, and an extension to the existing driveway from the north-west would curve around from the south-western boundary to connect with the front elevation of the bungalow. The partially completed front elevation of the bungalow is visible within the identified view, and the glazed side elevation would be visible from within Mulroy Bay. The bungalow would lie at a lower level than the existing dwelling houses which line the cul-de-sac that serves the site, and so its visibility from this local road would be limited.
- 7.11. The appellant critiques the proposed bungalow on several grounds. She considers that its design would reflect the vernacular insufficiently, the proposed landscaping would be out of place within the site's coastal context, and the presence of both the bungalow and landscaping would spoil the identified view.

- 7.12. The applicant has responded by expressing the view that the proposal would be of benefit to the site visually as it would complete the existing authorised structure on the site and ensure the removal of unauthorised structures. As such the proposal would not establish a precedent for entirely new dwelling houses in the surrounding area. The PA comments, too, on the opportunity that the proposal presents to regularise planning matters on the site, and on the site's low-lying and sheltered location.
- 7.13. The applicant requests that the PA's Condition No. 2(a), which requires that the glazing be removed from within the gable of the south-east facing end elevation of the proposed bungalow, be omitted. He states that this glazing would add significantly to the amenity value of the proposed bungalow and its host elevation would only be visible from Mulroy Bay.
- 7.14. During my site visit, I observed the identified view, which is available from Mulroy Bay viewing point on the L-1032, the local road which encircles Rosguill. The site lies 1.1km from this viewing point and it is visible within the far middle distance of available views. This site is seen in conjunction with existing dwelling houses in the far and near middle distance. In the far middle distance, these dwelling houses are at a higher level, and they accompany the local road. In the near middle distance, they are at both this higher level and at comparable levels to the foreshore to that of the site. Beyond the site, the land is consistently lower and flatter, and, while devoid of dwelling houses, it is used for camping and so campervans are in evidence. Given this context, and given, too, the disturbed nature of the site, which is essentially an abandoned building site, I consider that the proposal would be capable of being absorbed visually within the site's host landscape.
- 7.15. During my site visit, I observed, too, that the existing dwelling houses within the vicinity of the site display a variety of types and designs, e.g., bungalows, dormer bungalows, and one-and-a-half-storey dwelling houses. Within this context, the proposed bungalow would not be out of place, and the traditional and modern influences exhibited by its design would be appropriate. Its lower and partially concealed siting would ensure that its visibility from the adjacent cul-de-sac would be far less than existing dwelling houses in the vicinity of the site. Its south-eastern elevation would not be visible, and so I agree with the applicant that Condition No.

2(a) should be omitted as being unnecessary for safeguarding the visual amenities of the area.

- 7.16. The applicant and appellant disagree on which is the better landscape and visual outcome for the site. The former considers that the proposal, which would complete the partially built bungalow and remove the existing unauthorised structures, would be preferable. The latter considers that the retention of the partially built bungalow on an overgrown site would not be without precedent in the Donegal countryside and so it would be preferable.
- 7.17. I consider that, in the light of my assessment of landscape and visual impacts, it would be preferable for the partially built bungalow on the site to be completed. I also consider that, in the light of this assessment, the PA's Condition No. 11, which requires that tree planting be undertaken to the site boundaries would be inappropriate for the coastal location of the site. Instead, such planting should comprise native hedging only.
- 7.18. I conclude that the proposal would be compatible with the landscape and visual amenities of the area.

(iii) Development standards

- 7.19. As revised, the proposal would entail the provision of a four-bed/eight-person bungalow with spacious daytime accommodation and internal storage facilities. The internal layout of the bungalow would largely replicate that of the partially completed dwelling house on the site, which has been built to wall plate level. Notation on the submitted plans indicates that some modification in openings would occur, e.g., the specification of a corner window and extensive glazing in the south-eastern gabled elevation. Notation on the submitted plans also indicates that "existing blockwork walls to be retained where structurally sound, subject to review by structural engineer."
- 7.20. The principal elevation of the proposed bungalow would face south-west, and, as noted above, its glazed gabled side elevation would face south-east. The lighting to and outlooks from openings in these elevations would be good. The rear and remaining side elevations would correspond with the steepened slopes on the site formed in conjunction with the platform for the bungalow. Consequently, some

curtailment in lighting and outlook would affect the habitable room openings in the rear elevation.

- 7.21. The site has an area of 0.6 hectares. While it slopes at moderate gradients from the north-west to the south-east, its size and uninterrupted south-eastern aspect would ensure its amenity value as grounds to the proposed bungalow.
- 7.22. I conclude that the proposal would afford a satisfactory standard of amenity to future residents.

(iv) Access

- 7.23. The site is accessed at present through the grounds of the adjoining residential property to the north-west by means of a driveway from the cul-de-sac further to the north-west, the L-10326-0. Given the unused and vacant state of this site, traffic is not presently generated, although in the past, when the mobile home was in use, traffic would have been generated.
- 7.24. Under further information, the applicant submitted a traffic survey, which he undertook on Monday 26th September 2022 between 08.30 and 12.30. This survey recorded very low levels of vehicular movements on the cul-de-sac, i.e., four movements, and an 85th percentile vehicular speed of 39.47 kmph. Under Table 3 of Appendix 3 of the CDP, the nearest applicable speed is 42 kmph for which sightlines with “y” distances of 50m are normally required.
- 7.25. The applicant also submitted drawing no. 0004 revision 01 and accompanying photographs, which illustrate that the existing site access point from the cul-de-sac lies 25m from its extremity to the east, and a line of sight exists over the nearside grass verge. To the west, a 70m line of sight exists to a telegraph pole, largely over the nearside grass verge.
- 7.26. The appellant draws attention to the PA’s Condition No. 4, which requires eastern and western sightlines with “y” distances of 25m and 50m. (This Condition also cites a “x” distance of 2.4m). She states that the applicant does not control the land over which the sightlines occur.
- 7.27. During my site visit, I observed that the site access point is gated, and the above cited sightlines are present over the nearside grass verges, although a concessionary “x” distance maybe necessary. Given the low level of vehicular

movements, I consider that this concessionary distance would be warranted, and so, as existing sightlines are adequate, the need for Condition No. 4 would not arise.

- 7.28. On-site, the proposal would entail the utilisation of the existing stone sub-base to the originally envisaged driveway, which would be finished in gravel. This driveway would be 10m wide at its extremity and so the opportunity to turn a vehicle within it would exist.
- 7.29. I conclude that the proposed access arrangements for the site would be satisfactory.

(v) Water

- 7.30. The proposal would be served by an existing connection to the public water mains.
- 7.31. Under the OPW's flood maps, the site is not shown as being the subject of any formally identified flood risk.
- 7.32. Surface water run-off from the roof of the proposed bungalow would discharge via a silt trap to a gravel filled soak pit, which would be sited to the south-west of this bungalow.
- 7.33. Waste water would be handled on-site by means of a packaged waste water treatment system and a polishing filter, both of which would be sited in the north-eastern portion of the site.
- 7.34. The applicant has submitted a completed site characterisation form, the main findings of which are summarised below:

- The aquifer is poor and of extreme vulnerability. The groundwater protection response is R2₁. Appendix E of the EPA's CoP DWWTSS states that this response is "Acceptable subject to normal good practice..."
- Local groundwater flows to the south.
- The trial hole was dug to a depth of 1.8m. Top-soil and sub-soil consists of gravelly silt/clay. After 48 hours groundwater was not encountered.
- The "T" (sub-surface/depth of 600mm) and "P" (surface/depth of 400mm) test results were 20.28 min/25mm and 21.53 min/25mm, respectively. Accordingly, both the sub-soil and the topsoil have suitable percolation properties.

- 7.35. The applicant acknowledges both the site condition and gradient. He, therefore, proposes that a land drainage system be installed in the north-eastern portion of the site, prior to the installation of the polishing filter. This system would entail the digging out of the site of the polishing filter and the laying of stone or gravel filled pipes at a depth of 1.2m. (Excavated soil would subsequently be reinstated). It would also entail the provision of a gravel filled drain, which would be sited up gradient of the polishing filter, and which would intercept surface water run-off before it reaches this polishing filter. Details of these drainage arrangements should be conditioned.
- 7.36. Sections 6.2 and 6.3, including Table 6.2, of the EPA's CoP DWWTS advise on sloping sites and minimum separation distances from, amongst other things, the foreshore. The former Section states that sites where slopes exceed gradients of 1 in 8 are unsuitable for DWWTSs, and the latter Section states that the minimum separation distance between a DWWTS and the foreshore is 50m.
- 7.37. The submitted plans indicate that the proposed WWTS and polishing filter would be installed on slopes with gradients of typically 1 in 6. While they do not explicitly show the high and low tide lines that denote the foreshore, from my site visit and a comparison of the plans available to me, I note that the south-eastern boundary of the site abuts a change in levels down to either a sandy beach or rocky outcrops by the sea either immediately or beyond a grassy strip. This change of levels denotes the extremity of the ground which would be available for absorbing the discharge from the polishing filter, and it lies between 21m and 38m to the south-east of where the polishing filter would be sited. If the back of the sandy beach and rocky outcrops are the high tide line, too, then clearly the 50m separation distance would not be achievable.
- 7.38. The appellant critiques the proposed WWTS and polishing filter on grounds which include its hydrological path to the sea and its proximity to the foreshore. The PA's response refers to the opportunity that the proposal affords to remove the existing dwelling and its unsatisfactory waste water drainage arrangements and to ensure that any new arrangements would comply with contemporary standards.
- 7.39. During my site visit, I inspected the existing dwelling externally and the accompanying storage shed. I understand that both structures are unauthorised, and their duration on the site is such that the opportunity for enforcement has past. I

observed that they are in a state of disrepair. The dwelling is unoccupied, and the shed is unused.

- 7.40. I note from the revised site layout plan submitted under 98/1057, the existing dwelling is served by that a septic tank and percolation area, which lie to the south-east of it in a position close to the foreshore. I note, too, that the WWTS (biocycle system) and percolation area for the bungalow proposed under 98/1057 would have been sited adjacent to this existing septic tank and percolation area, and so in a position close to the foreshore, too.
- 7.41. Sections 1.3 and 2.2 of the EPA's CoP DWWTS allow for a concessionary approach in circumstances where the "the proposed upgrade will protect human health and the environment." In a situation wherein the existing septic tank and percolation area and the previously permitted WWTS and percolation area either are or would have been closer to the foreshore than the WWTS and polishing filter now proposed, I consider that the opportunity to remove the existing septic tank and percolation area in conjunction with the installation of the proposed WWTS and polishing filter should be realised in the interests of public health and the environment, and so the concessionary approach is applicable.
- 7.42. I conclude that, while the proposed WWTS and polishing filter would fail to accord with the advice of the EPA's CoP DWWTS, in the unusual circumstances pertaining to the site, the concessionary approach allowed for by the CoP should be adopted.

(vi) Appropriate assessment

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

- 7.43. The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have had a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal would not adversely affect the integrity of the European site before planning consent can be given.

Screening the need for appropriate assessment

- 7.44. The applicant has submitted a screening report for appropriate assessment as part of its NIS, which is entitled “Screening Report for Appropriate Assessment for the completion of a dwelling granted under 98/1057 with on-site sewage treatment and associated site development works at Dundooan Lower, Downings, County Donegal”, and which is dated January 2022.
- 7.45. The screening report was prepared in line with current best practice guidance and provides a description of the development and identifies European sites within a possible zone of influence of the development. This report concludes as follows:
- Following the assessment as detailed in this AA Screening Report, it is concluded that significant effects on the Natura 2000 network arising from the proposed development, either individually or in combination with other plans or projects, cannot be excluded at this stage. Therefore Stage 2 Appropriate Assessment is required.*
- 7.46. Having reviewed the documents and submissions, I am satisfied that the information allows 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.
- 7.47. The applicant provides a description of the project on Page 5 of its NIS. Essentially, this project is “for the completion of a dwelling granted under 98/1057 with on-site sewage treatment and associated site development works at Dundooan Lower, Downings, County Donegal.”
- 7.48. The applicant also provides a description of the site on Page 15 of its NIS: “The proposed development is located in the townland of Dundooan...Access is provided by a private site entrance, just off the L-10326-0. The site is bounded by the access road and dwellings to the north, agricultural grasslands and dwellings to the east and west, and Inverbeg Bay to the south.”
- 7.49. Taking account of the characteristics of the development in terms of its location and the scale of operations, the following issues are considered for examination in terms of implications for likely significant effects on European sites: “The surface water pathway on site represents an avenue for negative effects such as deterioration of water resource quality.”

7.50. The site is located immediately adjacent to the European sites, i.e., Mulroy Bay SAC (002159) and Tranarossan and Melmore Lough SAC (000194). The site is also located c. 0.41 km to the south-east of Horn Head to Fanad Head SPA (004194).

Mulroy Bay SAC

7.51. The qualifying interests and conservation objectives, i.e., M – maintain their favourable conservation condition, or R – restore their favourable conservation condition, are listed below.

- *Mudflats and sandflats not covered by seawater at low tide [1140] – M*
- *Large shallow inlets and bays [1160] – M*
- *Reefs [1170] – M*
- *Lutra lutra (Otter) [1355] – R*

Tranarossan and Melmore Lough SAC

7.52. The qualifying interests and conservation objectives, i.e., M – maintain their favourable conservation condition, or R – restore their favourable conservation condition, are listed below.

- *Mudflats and sandflats not covered by seawater at low tide [1140] – M*
- *Annual vegetation of drift lines [1210] – M*
- *Perennial vegetation of stony banks [1220] – M*
- *Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] – M*
- *Embryonic shifting dunes [2110] – M*
- *Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120] – M*
- *Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130] – M*
- *Decalcified fixed dunes with *Empetrum nigrum* [2140] – M*
- *Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*) [2170] – M*
- *Humid dune slacks [2190] - ?*
- *Machairs (* in Ireland) [21A0] - ?*

- *Hard oligo-mesotrophic waters with benthic vegetation of Chara spp.* [3140] – M
- *European dry heaths* [4030] – M
- *Alpine and Boreal heaths* [4060] – M
- *Petalophyllum ralfsii (Petalwort)* [1395] – M

Horn Head to Fanad Head SPA

7.53. The qualifying interests and conservation objectives, i.e., M – maintain their favourable conservation condition, or R – restore their favourable conservation condition. The conservation objectives for this SPA do not distinguish between maintain or restore for each of the qualifying interests.

- *Fulmar (Fulmarus glacialis)* [A009]
- *Cormorant (Phalacrocorax carbo)* [A017]
- *Shag (Phalacrocorax aristotelis)* [A018]
- *Barnacle Goose (Branta leucopsis)* [A045]
- *Peregrine (Falco peregrinus)* [A103]
- *Kittiwake (Rissa tridactyla)* [A188]
- *Guillemot (Uria aalge)* [A199]
- *Razorbill (Alca torda)* [A200]
- *Chough (Pyrrhocorax pyrrhocorax)* [A346]
- *Greenland White-fronted Goose (Anser albifrons flavirostris)* [A395]

7.54. During the construction and operational phases, “The surface water pathway on site represents an avenue for negative effects such as deterioration of water resource quality.” The qualifying interests that could have been affected by a deterioration in water quality would be as follows:

- In the Mulroy Bay SAC: Otter, and
- In the Horn Head to Fanad Head SPA: All the specified seabirds.

7.55. In-combination effects from other development sites could potentially have arisen.

- 7.56. No measures designed or intended to avoid or reduce any harmful effects of the project on a European site have been relied upon in this screening exercise.
- 7.57. The development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. Having carried out screening for appropriate assessment of the project, it has been concluded that the project either individually or in combination with other plans and projects could have had a significant effect on European sites Nos. 002159 and 004194, in view of their conservation objectives, and appropriate assessment is therefore required.
- 7.58. **The NIS**
- 7.59. The application included a NIS, which is entitled “Natura Impact Statement in relation to planning application by Daniel Love for the completion of a dwelling granted under 98/1057 with on-site sewage treatment and associated site development works at Dundooan Lower, Downings, County Donegal”, and which is dated February 2022. The NIS examines and assesses potential adverse effects of the proposed development on the following European sites:
- Mulroy Bay SAC
 - Tranarossan and Melmore Lough SAC
 - Horn Head to Fanad Head SPA
- 7.60. The NIS was prepared in line with current best practice guidance, and it concluded that “The proposed project as detailed, either individually or in combination with other plans and projects, will have no significant adverse effects on the integrity of any Europeans sites if all mitigating measures as outlined in Section 6 are implemented. The proposed development as described will not alter the structure or function of any Natura 2000 site or negatively impact the conservation of any qualifying interest/special conservation interest therein.”
- 7.61. Having reviewed the NIS, I am satisfied that the information allows for a complete assessment of any adverse effects of the development on the conservation of the following European sites alone, or in combination with other plans and projects:
- Mulroy Bay SAC (002159)
 - Tranarossan and Melmore Lough SAC (000194)

- Horn Head to Fanad Head SPA (004194)

7.62. Appropriate assessment of implications of the proposed development on each European site

7.63. 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 have resulted in significant effects are assessed, and mitigation measures designed to avoid or reduce any adverse effects are considered and assessed.

7.64. The following sites are subject to appropriate assessment:

- Mulroy Bay SAC (002159)
- Tranarossan and Melmore Lough SAC (000194)
- Horn Head to Fanad Head SPA (004194)

7.65. The qualifying interests and conservation objectives for these sites are set out above under my screening exercise.

7.66. The main aspects of the proposed development that could adversely affect the conservation objectives of European sites are: “The surface water pathway on site represents an avenue for negative effects such as deterioration of water resource quality.”

7.67. The qualifying interests that could be affected by a deterioration in water quality would be as follows:

- In the Mulroy Bay SAC: Otter, and
- In the Horn Head to Fanad Head SPA: All the specified seabirds.

7.68. The applicant’s NIS sets out a series of existing mitigation measures, which would address the factors, which could adversely affect the integrity of the identified European sites. These mitigation measures are set out in Table 9.1, and they can be summarised as follows:

Site clearance works:

Threats	Mitigation
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Suspended sediments in surface water run-off	Silt fence around site boundaries Settlement pond Cessation of works during orange weather warnings
Dust	Dampening down of stockpiles Stockpiles and vehicles to be netted/sheeted Seeding of earthworks
Noise	Use of silencers and acoustic covers Maintenance of plant and machinery Daylight hours of working only
Dumping	Only on-site, as distinct from Natura sites

Construction phase:

Threats	Mitigation
Hydrocarbons in surface water run-off	Use of drip trays Availability of spill kits Bunded storage of hydrocarbons Retention of silt fences Retention of settlement pond
Invasive species	Any imported material to be from invasive free location Planting with native species only

Operational phase:

Threats	Mitigation
Disturbance	Outdoor lighting to be hooded and of low wattage
Surface water run-off	Use of by-pass separator before discharge to soakpit WWTS and polishing filter to be properly installed

- 7.70. With the above cited mitigation measures in place, the only residual impact foreseen stems from the proposed WWTS and polishing filter, the installation of which would be on a moderate slope close to the Mulroy Bay SAC and Tranarossan and Melmore Lough SAC. The WWTS would be a biocycle system with a polishing filter. It would represent an upgrade on the septic tank and percolation area, which serve the existing dwelling on the site. It would also be sited further from the foreshore than the existing septic tank and percolation area. In these circumstances any residual impact would be of a lower order than could be expected from any resumption in the occupation of the existing dwelling.
- 7.71. In-combination effects are considered by the NIS. The mitigation measures with respect to water quality are cited as satisfactorily addressing any in-combination effects with other development.
- 7.72. I am therefore able to ascertain with confidence that the project would not adversely affect the integrity of the Mulroy Bay SAC, Tranarossan and Melmore Lough SAC, and the Horn Head to Fanad Head SPA.
- 7.73. The project has been considered in light of the assessment of the requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended.
- 7.74. Having carried out screening for appropriate assessment, it was concluded that it may have a significant effect on the Mulroy Bay SAC (002159) and the Horn Head to Fanad Head SPA (004194). Consequently, an appropriate assessment is required of the implications of the project on the qualifying features of these sites in light of their conservation objectives.

- 7.75. Following an appropriate assessment, it has been ascertained that the development, individually or in combination with other plans or projects would not adversely affect the integrity of the European Sites Nos. 002159, 000194, and 004194, or any other European site, in view of the sites' conservation objectives.
- 7.76. The conclusion is based on a complete assessment of all aspects of the project and there is no reasonable doubt as to the absence of adverse effects. This conclusion is based on:
- A full and detailed assessment of the project, including mitigation measures, in relation to the conservation objectives of European Sites Nos. 002159, 000194, and 004194.
 - An assessment of in combination effects with other plans and projects.
 - No reasonable scientific doubt as to the absence of adverse effects on the integrity of European Sites Nos. 002159, 000194, and 004194.

8.0 Recommendation

- 8.1. That permission be granted.

9.0 Reasons and Considerations

Having regard to the National Planning Framework, the Sustainable Rural Housing Guidelines, the Donegal County Development Plan 2018 – 2024, and the planning history of the site, it is considered that, subject to compliance with conditions, the proposal would comply with the County rural housing strategy. As revised, the proposed dwelling house would be compatible with the landscape and visual amenities of the area, and it would afford a satisfactory standard of amenity to future residents. Access arrangements to the site would be satisfactory, and, given the opportunity to upgrade the existing waste water drainage arrangements on the site, the applicant's water related proposals would be satisfactory, too. Likewise, the proposal would not adversely affect the integrity of neighbouring European Sites. It would thus accord with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 11th day of October 2022 and by the further plans and particulars received by An Bord Pleanála on the 19th day of January 2023, 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 proposed development shall be amended as follows:</p> <p>(a) Detailed plans and cross sections of the land drainage scheme proposed for the site shall be prepared.</p> <p>(b) Detailed plans and cross sections of the polishing filter proposed to accompany the waste water treatment system shall be prepared.</p> <p>(c) Detailed plans and specifications for hard and soft landscaping shall be prepared. Soft landscaping to the site boundaries shall entail the planting of native hedging only. A timescale for the planting of all soft landscaping shall be prepared, too.</p> <p>Revised drawings and specifications showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of public health and visual amenity.</p>
3.	<p>(a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.</p>

	<p>(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.</p> <p>This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.</p> <p>Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted in the interest of the proper planning and sustainable development of the area.</p>
4.	<p>The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.</p> <p>Reason: In the interest of visual amenity.</p>
5.	<p>The external walls shall be finished in neutral colours such as grey or off-white.</p> <p>Reason: In the interest of visual amenity.</p>
6.	<p>All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.</p> <p>Reason: In the interest of visual amenity.</p>
7.	<p>(a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 11th day of October 2022, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2021. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.</p> <p>(b) Certification by the system manufacturer that the system has been</p>

	<p>properly installed shall be submitted to the planning authority within four weeks of the installation of the system.</p> <p>(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.</p> <p>(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.</p> <p>(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health.</p>
8.	<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 provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste. It shall also incorporate the mitigation measures for the pre-construction and construction phases of the development as outlined in Table 6.1 of the Natura Impact Statement dated February 2022.</p> <p>Reason: In the interests of public safety, residential amenity, and the environment.</p>
9.	<p>(a) Prior to the commencement of occupation of the new dwelling house on the site, the existing chalet-like dwelling and veranda, the accompanying</p>

	<p>septic tank and percolation area, and storage shed shall be demolished, dug up, and removed from the site.</p> <p>(b) During the operational phase of the development, the mitigation measure denoted as Item 33 in Table 6.1 of the Natura Impact Statement dated February 2022 shall be fully implemented.</p> <p>Reason: To prevent disturbance to wildlife.</p>
10.	<p>The developer shall pay to the planning authority a financial contribution of €1714 (one thousand seven hundred and fourteen euro) 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. The application of any indexation required by this condition 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.</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>

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
Planning Inspector

3rd November 2023