



An
Bord
Pleanála

Inspector's Report

ABP-315406-22

Development	Construction of a house with integral garage and wastewater treatment system and percolation area.
Location	Rosgarrow TD, Milford, Letterkenny PO, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2251654
Applicant(s)	Seamus and Makenya Kelly.
Type of Application	Permission.
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Observer(s)	Josephine Riney.
Date of Site Inspection	21 st March 2023.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 2.61ha and is located in the townland of Rosgarrow, approximately 1km north of Milford in north County Donegal.
- 1.2. The site is in a rural area and consists of a greenfield/undeveloped plot that is in excess of 150m from the public road and is at a considerably lower topographical level, approx 35m below the level of the road.
- 1.3. The site is accessed via an existing access that serves a bungalow and adjacent farmland. It comprises of a stone track that is at grade in the area of the existing bungalow and which thereafter leads down a steep gradient, to a gated access to the main part of the site.
- 1.4. The site abuts Mulroy Bay SAC, which encroaches to the northern boundary.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the construction of a house, integral garage and wastewater treatment system and percolation area.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority refused permission on 24th November 2022, for 4 No. reasons as follows: -
 1. *The subject site is designated as being in a ‘Stronger Rural Area’ and it is a policy of the Council to ensure that proposals for new rural dwellings ‘...do not cause a detrimental change to, or further erode the rural character of the area’ (Policy RH-P-2). In considering the acceptability of such proposals, the Council is guided by a number of considerations including the requirement to ‘avoid the creation or expansion of a suburban pattern of development in the rural area’ and shall avoid developments which ‘by its positioning, siting or location would.....constitute haphazard development’ and confirm that a ‘proposed*

dwelling will be unacceptable where it is prominent in the landscape'. Having regard to: (a) the backland nature of the development remote from the public road and not within an infill location within an existing cluster (b) unspoilt and visually exposed nature of the site and (c) the expansion of a sub-urban pattern of development (d) the fact that if the proposed development is permitted it would result in further encroachment onto undeveloped backlands, the overall proposal would erode the rural character of this Stronger Rural Area and would be injurious to the visual amenity and character of this area. Accordingly, it is considered that the proposed development would fail to assimilate successfully into the landscape and would by reason of itself and the undesirable precedent it would set, cause a detrimental change to and further erode the rural character and visual amenities of the area. To permit the development would therefore be contrary to the aforementioned policy of the County Donegal Development Plan 2018–2024 (as varied) and thereby be contrary to the proper planning and sustainable development of the area.

2. *It is a policy of the Council (RH-P-9) “to seek the highest standards of siting and architectural design for all new dwellings constructed within rural areas and the Council will require that all new rural dwellings are designed in accordance with the principles set out in Appendix 4 of the County Development Plan, entitled ‘Building a House in Rural Donegal – A Location, Siting and Design Guide’” Furthermore, Policy RH-P-1 of the aforementioned Plan states that ‘proposals for individual dwellings shall be subject to the application of Best Practice in relation to siting, location and design of rural housing as set out in Appendix 4 and shall comply with Policy RH-P-2’. It is considered that the overall design by reason of:*

- The unacceptable mass and scale in this remote rural setting,*
- The overall geometry of the proposed dwelling which is not reflective of the Donegal vernacular form, the complex roof structure and differing pitch along same plane and*
- The excessive balconies which are not indicated on floor plans,*

Results in an overall design that departs from the vernacular, fails to represent high quality traditional design in the context of the receiving landscape, and by virtue of its siting on this coastal location remote from established development:

(i) would result in an unduly strident and visually intrusive physical feature imposed on the landscape; (ii) would dominate, rather than integrate with the local landscape; and (iii) which overall fails to achieve Best Practice in relation to siting, location and design of rural housing. Accordingly, it is considered that the proposed development would fail to assimilate successfully into the landscape and would by reason of itself and the undesirable precedent it would set, cause a detrimental change to and further erode the rural character and visual amenities of the area. To permit the development would therefore be contrary to the aforementioned objective and policies of the County Donegal Development Plan 2018–2024 (as varied) and thereby be contrary to the proper planning and sustainable development of the area.

3. *Access to the proposed development proposal is off the adjoining county road, L-1242-1. Policy T-P-15 of the County Donegal Development Plan 2018-2024 (as varied) states that ‘it is a policy of the Council to require that all development proposals comply with the Development & Technical Standards set out in Appendix 3 to promote road safety’. On the basis of the information submitted in respect of the application and particularly having regard to absence of information regarding third party consents to achieve and maintain the proposed visibility splays and the absence of information regarding gradient of access, compliance with the requirements of Part B; Appendix 3: Development Guidelines and Technical Standards of County Donegal Development Plan 2018 – 2024 (as varied) has not been satisfactorily demonstrated. It is therefore considered that the proposed development would be contrary to the traffic safety provisions of the aforementioned policy of the County Development Plan 2018-2024 (as varied), which would be contrary to the proper planning and sustainable development of the area.*
4. *The subject site abutts Mulroy Bay SAC (site code; 002159) with surface water discharging to Mulroy Bay. It is an objective of the Planning Authority (Objective NH-O-2, County Donegal Development Plan 2018-2024 (as varied)) ‘to comply with Article 6 of the Habitats Directive (92/43/EEC) and have regard to the relevant conservation objectives, management plans, qualifying interests and threats to the integrity of Natura 2000 sites’ and (Objective NH-O-3,) ‘to maintain the conservation value of all existing and/or proposed SAC’s, SPA’s and NHA’s*

and RAMSAR sites including those plant and animal species that have been identified for protection'. Furthermore it is a policy of said Plan (Policy NH-P-1) 'to ensure development proposals do not damage or destroy any sites of international or national importance, designated for their wildlife/habitat significance...including SAC's, SPA's, NHA's, Ramsar Sites and Statutory Nature Reserves'. On the basis of the information submitted in support of the planning application, and in particular the absence of any assessment or competent statement on the likely impact of the proposed development on the conservation objectives of the Mulroy Bay SAC, their qualifying interests or objectives, the Planning Authority is not satisfied that the proposed development would either individually or in combination with other projects, not have a significant effect on the integrity of the Natura 2000 sites. Accordingly, to permit the proposed development would materially contravene the aforementioned objectives and policies of the County Development Plan 2018-2024 (as varied) and would thereby be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. A Planning Report dated 21st November 2022 has been provided, which reflects the decision to refuse permission. The report states that the site is located in a stronger rural area and that the principle of development is acceptable, in view of the submission of a letter of bona fide from a County Councillor, but concerns are expressed regarding the backland nature of the site, the proposed house design and proposed access arrangements. The report recommends that permission be refused for 4 No. reasons, which are consistent with the Planning Authority's decision.

3.2.2. A separate Appropriate Assessment Screening Report is appended to the Planning Report, within which it is stated that Stage 2 Appropriate Assessment is required.

3.2.3. Other Technical Reports

An **Environmental Health Officer** (HSE) report dated 28th October 2022 has been provided, which recommends conditions.

The Planning Report indicates that the **Municipal District Engineer** was consulted on the application but did not make a submission.

3.3. Prescribed Bodies

- 3.3.1. Irish Water made a submission on 4th November 2022, expressing no objection to the development.
- 3.3.2. The Planning Report indicates that An Taisce and the Department of Housing, Planning and Local Government were consulted on the application but did not make a submission.

3.4. Third Party Observations

- 3.4.1. A number of third-party submissions were received, the issues raised within which can be summarised as follows: -
- Public notices,
 - Land ownership,
 - Access,
 - Rural housing need.

4.0 Planning History

- 4.1. I did not encounter any recent planning records pertaining to the site.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

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

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

1. Proposals for individual dwellings shall be subject to the application of Best Practice in relation to the siting, location and design of rural housing as set out in Appendix 4 and shall comply with Policy RH-P-2;
2. Proposals for individual dwellings shall be sited and designed in a manner that enables the development to assimilate into the receiving landscape and that is sensitive to the integrity and character of rural areas as identified in Chapter 7 and Map 7.1.1 of this Plan. Proposals for individual dwellings shall also be located in such a manner so as not to adversely impact on Natura 2000 sites or other designated habitats of conservation importance, prospects or views including views covered by Policy NH-P-17.;
3. Any proposed dwelling, either by itself or cumulatively with other existing and/or approved development, shall not negatively impact on protected areas defined by the North Western International River Basin District plan;
4. Site access/egress shall be configured in a manner that does not constitute a hazard to road users or significantly scar the landscape, and shall have regard to Policy T-P15;
5. Any proposal for a new rural dwelling which does not connect to a public sewer or drain shall provide for the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health and accords with Environmental Protection Agency codes of practice;
6. Proposals for individual dwellings shall be subject to the flood risk management policies of this Plan.;
7. In the event of a grant of permission the Council will attach an Occupancy condition which may require the completion of a legal agreement under S47 of the Planning and Development Act 2000 (as amended).

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

1. A proposed dwelling shall avoid the creation or expansion of a suburban pattern of development in the rural area;
2. A proposed dwelling shall not create or add to ribbon development (see definitions);
3. A proposed dwelling shall not result in a development which by its positioning, siting or location would be detrimental to the amenity of the area or of other rural dwellers or would constitute haphazard development;
4. A proposed dwelling will be unacceptable where it is prominent in the landscape; and shall have regard to Policy T-P-15;
5. A proposed new dwelling will be unacceptable where it fails to blend with the landform, existing trees or vegetation, buildings, slopes or other natural features which can help its integration. Proposals for development involving extensive or significant excavation or infilling will not normally be favourably considered nor will proposals that result in the removal of trees or wooded areas beyond that necessary to accommodate the development. The extent of excavation that may be considered will depend upon the circumstances of the case, including the extent to which the development of the proposed site, including necessary site works, will blend in unobtrusively with its immediate and wider surroundings (as elaborated below).

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

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

- Persons who, for exceptional health circumstances, can demonstrate a genuine need to reside in a particular rural location.

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

RH-P-9: It is a policy of the Council to seek the highest standards of siting and architectural design for all new dwellings constructed within rural areas and the Council will require that all new rural dwellings are designed in accordance with the principles set out in Appendix 4 of the County Development Plan, entitled 'Building a House in Rural Donegal – A Location, Siting and Design Guide'.

- 5.1.3. According to Map 7.1.1 'Scenic Amenity' the site lies partly within an area of high scenic amenity and partly within an area of moderate scenic amenity. Policy NH-P-7 is thus relevant and it states: -

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

5.2. National Planning Policy Framework

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

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

- *In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing*

in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;

- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements’.*

5.3. Sustainable Rural Housing Guidelines for Planning Authorities

- 5.3.1. The Guidelines identify a number of rural area typologies and accompanying Map 1 provides an indicative outline of these area typologies. According to this indicative map, the subject site is in an ‘area under strong urban influence’. It is noted from the Guidelines that this map is an indicative guide to the rural area types only and that the development plan process should be used to identify different types of rural area.
- 5.3.2. For areas under strong urban influence, the Guidelines outline that the development plan should *‘on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.’*
- 5.3.3. The Guidelines require a distinction to be made between urban and rural generated housing needs, in the different rural area types. In relation to the identification of people with rural generated housing needs, the Guidelines refer to ‘Persons who are an intrinsic part of the rural community’ and ‘Persons working full-time or part-time in rural areas. Of relevance to this appeal, ‘Persons who are an intrinsic part of the rural community’ are identified as having *“spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes.”*

5.4. Natural Heritage Designations

- 5.4.1. The site lies adjacent to Mulroy Bay SAC (Site Code 002159) which abuts the northern boundary.

5.5. EIA Screening

- 5.5.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.5.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
- 5.5.3. The proposed development consists of one house and associated site works including a wastewater treatment system. It therefore falls well below the applicable threshold for mandatory EIA.
- 5.5.4. In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows: -
- The development plan allows for unique designs.
 - The proposed house is in excess of 30m from the public road and cannot be seen from it.
 - The applicant intends to supplement planting, to allow the house assimilate rather than to allow it become visually intrusive.

- Third party consents for the provision of sightlines are provided.
- A Natura Impact Statement would have been provided, had the Planning Authority requested same. It is the applicant's intention to maintain the conservation value of designated sites in the area.
- The proposed is maintained in line with a house permitted under Reg. Ref. 0550313 but could have been relocated as part of an additional information submission.
- The applicant is a returning migrant.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority made a submission on 19th January 2023, advising of its view that the proposed house will impact on the rural and unspoilt nature of the landscape, particularly in views from the R246. The submission also advises that it did not consider identified issues could have been addressed by way of revision, as part of consideration of the application.

6.3. Observations

- 6.3.1. An observation has been received from Josephine Riney, the contents of which can be summarised as follows: -
- The applicants do not have a housing need.
 - A sewer pipe traverses the applicant's lands, which has been the source of pollution.
 - An EIA should have been undertaken.
 - Information provided by Irish Water regarding a water connection is incomplete.

6.4. Further Responses

- 6.4.1. None.

7.0 Assessment

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

- Compliance with the rural housing strategy,
- Design and location,
- Access,
- Drainage, and
- Appropriate assessment.

7.2. Compliance with the Rural Housing Strategy

7.2.1. The observer questions whether the applicant's have a rural housing need.

7.2.2. The subject site is located in the townland of Rosgarrow, approximately 1km north of Milford in north County Donegal. It is in a rural area identified by the development plan as a 'Stronger Rural Area'. Development plan policy RH-P-3 applies in this location and it states that consideration will be given to proposals for one-off housing in specified circumstances, as follows: -

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

7.2.3. National Policy Objective (NPO) 19 of the National Planning Framework is also pertinent to the appeal and it states that in areas under strong urban influence the provision of single housing in the countryside will be facilitated based on the core consideration of demonstrable economic or social need to live in the rural area and

siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

- 7.2.4. In this instance a supplementary rural housing application form has been provided, within which the applicant states that they are a person with a vital link to the area by reason of having lived in the community for a period of at least 7 years and have immediate family links to the area for a period of at least 7 years. A Bona Fide letter from an Elected Member of Donegal County Council is indicated as having been provided in support of the application and, in this regard, I note that a letter from Elected Member dated 12th September 2022 has been provided, which states that the applicant is a member of the indigenous community.
- 7.2.5. From the information provided with the application and appeal, I do not consider the applicant has demonstrated compliance with policy RH-P-3 and NPO19. The thrust of both policies is that applicants must have a functional connection to the rural area and a demonstrable economic or social need to live in the area. From the information provided, I do not consider the applicant has demonstrated any current and ongoing functional connection to the area and thus has not demonstrated compliance with the aforementioned policies. I would also advise the Board that I do not consider a family connection to the area is sufficient to require a house in a rural area that is under urban influence.
- 7.2.6. Milford is identified by the development plan Core Strategy as a level 3 settlement and it is allocated a proportion of planned housing growth for the county over the plan period. Milford has an important role in the development of the county, in providing housing and local services for the surrounding community. From my observations on site, the area surrounding the subject site displays pressure for rural housing and, in my view, the development of further housing without adequate justification serves to undermine the role of Milford in the delivery of the Core Strategy.
- 7.2.7. In conclusion, I consider that no functional connection to the rural area and no demonstrable economic or social need to live in the rural area have been demonstrated. To permit the development would therefore contravene local and national policy in relation to rural housing and I consider permission should be refused on this basis.

7.3. Design and Location

- 7.3.1. Reason No. 1 of the Planning Authority's refusal states that the development would result in encroachment onto undeveloped backlands and would be injurious to the visual amenity and character of the area, failing to assimilate successfully into the landscape. Reason No. 2 states that the proposed design departs from the vernacular, fails to represent high quality traditional design and would result in a visually intrusive and dominant feature in the landscape, contrary to the provisions of the development plan. Identified concerns relate to the proposed mass and scale, the overall geometry and complex roof structure and excessive balcony areas.
- 7.3.2. The proposed house has an irregular shape, incorporating a number of projecting elements and presenting as a two-storey design across the front (north) and side elevations and as a bungalow design across the rear (south) elevation. It also incorporates a complex roof structure, reflecting the number of projecting elements. It has a stated gross floor area of 529sqm.
- 7.3.3. I share the Planning Authority concerns regarding the suitability of the site, which is effectively backland in nature. The house is located a considerable distance from the L-1242, in excess of 150m, and it is also at a considerably lower topographical level, indicated by the site layout plan as being 35m below the level of the L-1242. In my view, the construction of a house in the proposed location, which is not visually connected to other housing in the area, would disrupt the rural character of the area and be visually intrusive, particularly in views from the north.
- 7.3.4. The above concerns regarding the suitability of the site are magnified by the proposed design, which I consider is unsuited to this site. Whilst I do not object outright to a contemporary design, the proposed design incorporates extensive massing across the front (north) elevation in particular and results in a development that is likely to be highly visible and incongruent in the available views, to the detriment of the character of the area.
- 7.3.5. I recommend that permission be refused, in view of the above concerns.
- 7.3.6. As has been set out, the site is at a considerably lower level than the L-1242 and from the unnumbered site section drawing it appears there is a requirement for regrading works. No topographical survey was submitted with the application and I am thus uncertain as to the extent of such works. Should the Board be minded to

grant permission, they may wish to clarify with the applicant the extent of regrading required as part of the development.

- 7.3.7. Regarding the internal layout, given the large gross floor area of the house, the minimum recommendations of the *Quality Housing for Sustainable Communities* (2007) guidelines are exceeded.

7.4. Access

- 7.4.1. Access to the site is proposed from the L-1242, via an access that serves an existing bungalow and adjoining farmland. Sightlines of 160m x 2.5m in both directions from the site access are identified on the site layout drawing.
- 7.4.2. Reason No. 3 of the Planning Authority's refusal states that the development would be contrary to the traffic safety provisions of the development plan, in view of the absence of information regarding third-party consents to provide and maintain proposed sightlines from the site access from the L-1242 and also in the absence of information regarding the gradient of the internal access route.
- 7.4.3. As I have stated previously, the house is located in excess of 150m from the L-1242 and is identified as being at a level 35m below the level of the L-1242. The site layout drawing identifies the route of the access and states that the right of way, in the area closest to the L-1242 would be widened, but no further details of proposed works are provided within the application. In particular I would question whether ground regrading works are required for the area closest to the L-1242, where there is a steep gradient leading down to an existing gateway. As has been set out above, the issue was identified by the Planning Authority in its refusal but has not been addressed by the applicant as part of the appeal.
- 7.4.4. As I am recommending that permission be refused on other substantive grounds I have not engaged further with this issue. Should the Board be minded to grant permission, I would recommend they clarify with the applicant the extent of works proposed as part of the provision of the site access.
- 7.4.5. Regarding proposed sightlines, they are impeded by the roadside boundary of the north-adjointing property, including a wall that frames the access and hedge that runs parallel to the road. The impact of the boundary on the proposed sightlines is shown on the site layout drawing. As part of the appeal the applicant has provided third

party consent from Darren Nash and Eckhardt Schmit to remedial works in the northward and southward directions from the entrance to the main road, in order to provide sightlines.

7.5. **Drainage**

Surface water drainage

- 7.5.1. Surface water is identified as discharging to Mulroy Bay, to the north but no details of the proposed drainage system have been provided. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to submit and agree the proposed system with the Planning Authority.
- 7.5.2. The discharge of surface water to Mulroy Bay gives requires further consideration in respect of Appropriate Assessment, which is discussed in the following section.

Foul drainage

- 7.5.3. The development includes the provision of a septic tank and percolation area. The Site Suitability Assessment Report submitted with the application identifies the category of aquifer as 'poor', with a vulnerability classification of 'extreme'. Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice Domestic Wastewater Treatment Systems identifies an 'R2¹' response category i.e., acceptable subject to normal good practice. The Code of Practice also includes a note under the response category that where domestic water supplies are located nearby, particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required are met and the likelihood of microbial pollution is minimised.
- 7.5.4. A trial hole with a depth of 2.1m encountered 200mm of silt/loam and 1900mm of gravelly silt. The water table and bedrock are stated to have not been encountered in the trial hole. In relation to the percolation characteristics of the soil, a sub-surface percolation value (T-test) of 8.53 min/25mm was returned. The Report concludes that the site is suitable for the installation of a septic tank system and percolation area.
- 7.5.5. Having regard to the site percolation test results, I consider it has been demonstrated that the site can accommodate a wastewater treatment system. I note that the HSE Environmental Health Service did not object to the development and provided a recommended condition regarding the specification of the system to be provided.

7.6. **Appropriate Assessment**

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

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

Background on the Application

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

Screening for Appropriate Assessment- Test of likely significant effects

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

Brief description of the development

- 7.6.5. The development is described at Section 2 of this Report. In summary, permission is sought for the construction of a house, integral garage and wastewater treatment system and percolation area, on a site with a stated area of 2.6ha. Foul drainage is proposed to drain to an on-site septic tank system and surface water is proposed to discharge to Mulroy Bay, to the north.

European Sites

- 7.6.6. The site abuts Mulroy Bay SAC (Site Code 002159), which encroaches to the north site boundary.
- 7.6.7. There are a number of other European sites within a 15km search zone of the site, but I am satisfied that there is no possibility of significant effects arising, in view of the smallscale nature of the development.
- 7.6.8. The table below contains a summary of Mulroy Bay SAC.

European Site (code)	List of Qualifying interest /Special conservation Interest
Mulroy Bay SAC (Site Code 002159)	<ul style="list-style-type: none"> • Mudflats and sandflats not covered by seawater at low tide, • Large shallow inlets and bays, • Reefs, • Otter.

Evaluation of Effects

- 7.6.9. The construction phase will involve site clearance and excavation/construction, with the result that suspended solid and/or pollutant content may be present within surface waters on the site. However, the construction site is in excess of 50m from the SAC boundary and there is grassland in the intervening area that I am satisfied will act as a buffer, containing any such content within the site. I am therefore satisfied that it is unlikely that any suspended solid or pollutant content will be transferred from the subject site to the European site during construction and the issue can be excluded at this stage.
- 7.6.10. For the operational phase, surface water is proposed to discharge directly into the SAC but no details of the proposed system have been provided. In the absence of design details, I am unable to ascertain the adequacy of the proposed system to serve the site.
- 7.6.11. Foul water is proposed to be treated within a septic tank and percolation area. The EPA Code of Practice does not specify an absolute minimum setback distance from a heritage feature or NHA/SAC/SPA but I note that it requires a setback of 50m from a lake or foreshore should be maintained. In this instance the percolation area encroaches to within c.40m of the SAC.
- 7.6.12. The Natura 2000 Form for Mulroy Bay SAC identifies that it is at 'Medium' risk from diffuse pollution of surface waters arising from household sewage and wastewaters (threat code H01.08). There are a large number of one-off houses in the immediate surrounding area of the subject site, which are likely to treat effluent within on-site treatment systems.

- 7.6.13. Further, the observer makes reference to a sewer pipe that traverses the site, which discharges effluent from a County Council holding tank to Mulroy Bay and which she claims has been the source of pollution for a number of years. No details of such a pipe have been identified by the application.
- 7.6.14. Taking a precautionary approach and given the proximity of the proposed system to the SAC, the treatment of effluent on the site has the potential to result in in-combination effects on the SAC.

Screening Determination

- 7.6.15. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in combination, will have a significant effect on the following European site: -
- Mulroy Bay SAC (Site Code 002159).

Appropriate Assessment

- 7.6.16. The conservation objectives for Mulroy Bay SAC are: (1) To maintain the favourable conservation condition of Large shallow inlets and bays, (2) To maintain the favourable conservation condition of Reefs and (3) To restore the favourable conservation condition of Otter.
- 7.6.17. As I have set out previously, for the operational phase there is a possibility of suspended solids being discharged to the SAC, via surface water discharges. Details of the proposed system have not been provided with the application. Notwithstanding the absence of such details, I am satisfied that the incorporation of basic mitigation, in the form of a silt trap, is sufficient to ensure that suspended solid is not discharged to the SAC and I am satisfied that this can be controlled by condition, should the Board decide to grant permission.
- 7.6.18. Regarding foul water, the results of the subsurface test (T-test) indicate that the site is suitable for the treatment of effluent via an on-site septic tank but, notwithstanding this, the proposed system is in close proximity to the SAC boundary and the SAC is identified as being at risk from diffuse pollution of surface waters arising from

household sewage and wastewaters. The site is also connected to the SAC via groundwaters, where land levels fall toward the bay.

- 7.6.19. There are a number of one-off houses in the immediate surrounding area, which are likely to treat effluent within on-site treatment systems and which may give rise to in-combination effects on the SAC. I have also previously outlined that the observer makes reference to a sewer pipe that traverses the site, which discharges effluent from a County Council holding tank to Mulroy Bay and which similarly has the potential to give rise to in-combination effects on the SAC.
- 7.6.20. In the absence of an objective assessment of existing surface water quality within the SAC, together with an assessment of the nutrient content of groundwater discharges from the percolation area, I am unable to ascertain whether the development would adversely affect water quality within the SAC.

Appropriate Assessment Conclusion

- 7.6.21. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act 2000, as amended.
- 7.6.22. Having carried out screening for Appropriate Assessment of the project, it was concluded that it may have a significant effect on Sheephaven SAC (Site Code 002159). Consequently, an Appropriate Assessment was required of the implications of the project on the qualifying features of this sites, in light of its conservation objectives.
- 7.6.23. Following an Appropriate Assessment, it has not been ascertained beyond a reasonable doubt that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European site No. 002159, in view of the site's Conservation Objectives. This conclusion is based on:
- The close proximity of the proposed septic tank and percolation area to the SAC boundary and the hydrological connection via groundwater, which provides a route for wastewater being discharged from the site to enter the SAC;
 - The identification of the SAC as being at risk from diffuse pollution of surface waters arising from household sewage and wastewaters; and

- The absence of sufficient details regarding existing surface water quality within the SAC and the nutrient content of groundwater discharges from the percolation area.

7.6.24. Appropriate assessment identified that the proposed development has the potential to lead to significant effects on the European site, arising from discharge of suspended solids and/or pollutants to the drain and, in the absence of details regarding construction methods and proposed mitigation, the likelihood and/or extent of such effects cannot be determined. In these circumstances, adverse effects on integrity of the European sites cannot be excluded.

Recommendation

7.7. I recommend that planning permission is refused for following reasons and considerations set out hereunder.

8.0 Reasons and Considerations

1. Having regard to:

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

The Board considers that the applicant has failed to demonstrate an economic or social need to live in the rural area. In the absence of a demonstrated housing need at this location, the proposed development would result in a haphazard and

unsustainable form of development, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. The proposed development, by reason of its scale, massing and location on a backland plot that is remote from other development in the area, results in a haphazard and visually intrusive form of development that fails to respect the rural character of the area and would not assimilate into the landscape, contrary to policies RH-P-1 and RH-P-2 of the development plan. The development is therefore contrary to the aforementioned provisions of the development plan and is also contrary to the proper planning and development of the area.
3. On the basis of the information provided with the application and appeal, and in light of the Stage 2 Appropriate Assessment undertaken, the Board cannot be satisfied that the development, individually, or in combination with other plans or projects, would not be likely to have a significant effect on Mulroy Bay SAC (Site Code 002159), in view of the site's conservation objectives, by reason of the close proximity of the proposed septic tank and percolation area to the SAC boundary and the hydrological connection via groundwater, which provides a route for wastewater being discharged from the site to enter the SAC. In such circumstances, the Board is precluded from granting permission.

Barry O'Donnell
Planning Inspector

12th April 2023.