



An  
Bord  
Pleanála

## Inspector's Report ABP316049- 23

<b>Development</b>	House with treatment system.
<b>Location</b>	Ballaghderg, Letterkenny, Co.Donegal.
<b>Planning Authority</b>	Donegal County Council.
<b>Planning Authority Reg. Ref.</b>	2251009.
<b>Applicant(s)</b>	Gary Friel, Rachel Friel.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party.
<b>Appellant(s)</b>	Residents of Ballaghderg.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	23 <sup>rd</sup> August 2023.
<b>Inspector</b>	Aisling Dineen.

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## **1.0 Site Location and Description**

- 1.1. The subject site is located approximately 3.7 km north of Letterkenny in the townland of Ballaghderg, on the L-5922-1 county road. The road is positioned somewhat parallel with the N56 National Primary route from Letterkenny to Kilmacrenan. The area is characterised by one off rural housing and it is apparent that it is under development pressure given its proximity to Letterkenny.
- 1.2. The site comprises an infill site whereby there is a dwelling either side of it north and south. These sites are long rectangular sites in shape and there is a drain/stream running along the rear (west) boundary of the subject site and said sites either side of it. The opposite side of the road to the east of the site also contains a row of dwellings on somewhat larger sites, which are more elevated in terms of ground levels.
- 1.3. The site is an overgrown site with a significant quantity of vegetation/bushes/saplings established thereon. The site has a moderate slope reducing in gradient from east to west. The rear and west boundary is lined with a deciduous row of trees and a stream/drain. The serving road is relatively straight with a rising gradient from north to south.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for a single storey dwelling house with attic accommodation and waste water treatment system. The proposed house is 168 square metres.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

4.0 The planning authority made a decision to grant permission subject to 15 No conditions on the 16<sup>th</sup> February 2023. Conditions are of a generic nature, with the exception of the following:

Condition No 1 requires development to be strictly in accordance with revised plans and documents submitted.

Condition No 2 requires mitigation measures contained in Section 6 of the NIS to be implemented.

Condition No 3 relates to an occupancy clause.

5.0 The Chief Executive's decision reflects the planner's report.

#### **5.1. Planning Authority Reports**

##### **5.1.1. Planning Reports**

The planning report recommended a request for further information relating to 4 no items; rural housing policy (RH-P-5), EPA Code of Practice and associated minimum distances requirements, invasive species eradication management plan and an ecological report regarding nearby Natura 2000 sites (Leannan River, Lough Swilly SAC and Lough Swilly SPA).

The further information response was received on the 26<sup>th</sup> of October 2021 and a request was made for it to be re-advertised on the 7<sup>th</sup> December 2022.

##### **5.1.2. Other Technical Reports**

Area Roads Engineer: No objection subject to conditions.

Uisce Eireann: No objection subject to conditions.

## 6.0 Planning History

Planning Register Reference 97/441: Planning permission granted for the erection of 2 No dwelling houses with treatment units.

Planning Register Reference 01/7598: Planning permission granted for retention of revision of site layout.

## 7.0 Policy and Context

### 7.1. Development Plan

#### **Donegal County Development Plan 2018-2024**

The site is in a rural, unzoned part of County Donegal.

Map 6.2.1 'Rural Area Types' identifies that the site is in an area under strong urban influence. Relevant policy is RH-P-5.

**RH-P-5:** It is a policy of the Council to consider proposals for new one-off rural housing within Areas Under Strong Urban Influence from prospective applicants that have demonstrated a genuine need for a new dwelling house and who can provide evidence that they, or their parents or grandparents, have resided at some time within the area under strong urban influence in the vicinity of the application site for a period of at least 7 years. The foregoing is subject to compliance with other relevant policies of this plan, including RHP-1 and RH-P-2. New holiday home development will not be permitted in these areas.

Other 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 bonafides 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'.

## **7.2. Natural Heritage Designations**

The Leenan River SAC (Site Code 002176) is c 2 km from the site. The stream which flows along the west boundary of the site (Strem: EPA Code 39\_1183) discharges into the Coolboy Little stream, which flows for 1.24 km before discharging to Glashagh River, which is designated under the Leannan River SAC. Lough Swilly SAC (Site Code 002287) and Lough Swilly SPA (Site Code 004075), are c. 5 km east of the site.

## **7.3. EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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.

## **8.0 The Appeal**

### **8.1. Grounds of Appeal**

- The proposed dwelling is positioned much closer to the road than the adjoining houses, which leaves it at 3.5 metres from the roadside boundary. This will have a negative impact on streetscape.
- The sunroom and upstairs gable window will have an impact on the adjoining house in terms of overlooking and lack of privacy, which is located only 4.15 metres away.
- The plot is very narrow which will result in a cramped and overcrowded living conditions.
- The soil polishing filter is less than 10 metres from the adjoining house and is within 7.5 metres from the adjoining natural stream and ditch. This could result in water contamination and have a negative impact on the environment and on the health of residents in the area.
- The traffic survey submitted is not supported by data and was not carried out independently. The road is busy and traffic speeds are fast and the proposal will exacerbate the issue.
- The applicants' garage which is located on the road in the name of one of the applicants has an enforcement notice issued against it due to non-compliance with the regulations (UD-21195). This has already contributed to the traffic situation and a new house will further aggravate the situation.
- The applicant does not meet the criteria as required under policy RH-P-5 regarding areas under strong urban influence and does not comply with policies RH-P1, RH-P-2 and RH-P-5 as claimed in the application.
- Japanese Knotweed is growing on the site and poses a significant environmental risk and should be taken into consideration.

- The proposed development would have a negative impact on the environment, the local community and the streetscape.

## 8.2. Applicant Response

- The board is requested to allow the applicants build their forever home.
- The planning authority only decided to grant planning permission after all of the required reports and mitigation measures were submitted, which shows that the planning authority properly and adequately considered all impacts.
- The site is a typical infill site. Planning permission was granted on a larger site including this site under PI Ref Ref 97/441.
- The proposed dwelling is modest with a floor area of 68 square metres and the ridge height is 6.425 metres and it is similar and keeping with the adjacent houses.
- A site layout is attached with shows the building line of the proposed house and building lines of the houses to the north and south. It shows that the building line stays in line with existing development and in no way compromises safety.
- The nearest part of the sunroom to the house to the north is 30 metres and the gable wall of the house to the south is 32.5 metres from the proposed development. The house to the south has a much higher FFL.
- The appeal submission refers that the site is narrow. It is stated that the proposed house is 68 sq. metres and does not overpower the site. The site area is 0.16 hectares and it is shown on the site layout that all of the minimum distances are achieved relating to site boundaries and relating to the EPA Code of Practice. There is a proposed gravel driveway with parking for three cars and a turning area. A large lawn is also provided for.
- In designing the WWTS the assessor considered all issues raised by the appellant. All minimum distances are achieved and the proposal is compliant with the EPA Code of Practice for Waste Water Treatment Systems 2021.

- It is accepted that a new house will add to traffic but it will be residential traffic from permanent residents using the road to access and exit their family home. The methods used in the traffic survey were accurate and equates to an 85% speed of 48.9km p/h. There are unimpeded vision lines of 95 metres in each direction.
- The enforcement issue raised is not relevant to this appeal however as the agent for both it is submitted that the matter is being dealt with in order to regularise the situation with Donegal County Council.
- The proposal complies with RH-P-1.
- Regarding RH-P-2 the proposal is on an infill site, which does not add to ribbon development and is in line with existing development. The proposal is also on a site where permission was previously granted.
- Mr Gary Friel has resided in the area for greater than 7 years. He was born and reared in the neighbouring townland of Calhame 1.5 km from the site. The family home is owned by family members. The applicants' children have attended the National School at Illistrin, 400 metres from the site. The appellant has knowledge that the applicant owns a shed in the area and has worked in the local area all his adult life. Rachel Friel provides care to people, who require care and has many clients in the local Ballaghderg and Illistrin area. Both applicants are intrinsically linked to the area. The applicants comply with policies RH-1, RHP2 and RH-P-5 of the Donegal County Development Plan 2018 -2024.
- The applicants also support policy RH-P-3 of the County Development Plan.
- Regarding invasive species the applicant is willing to cooperate with all of the provisions contained under the invasive species management plan submitted.
- Planning Authority Response

### **8.3. Planning Authority Response**

- Contents of the appeal are noted.

- The planning authority rely on the reports and recommendations contained within the application file and specifically to the planning reported dated 09/02/2023 (and endorsed on 16/02/2023).

#### 8.4. **Observations**

- None

#### 8.5. **Further Responses**

- None

### 9.0 **Assessment**

9.1. Having examined all the application and appeal documentation on file and having regard to the relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and the planning authorities' reasons to grant planning permission. I am satisfied that no other substantive issues arise. AA also needs to be considered. The main issues, therefore, are as follows:

- Siting/Design/Residential Amenity
- Landscape
- Waste Water Treatment
- Rural Housing Policy
- Traffic Safety
- Other Issues
- Appropriate Assessment

9.2. Siting/Design/Residential Amenity

- 9.3. The area within which the subject site is located is identified as being under Strong Urban Influence and the character of the area certainly reflects this as it is typified by a significant number of one-off dwellings on either side of the L-5922-1.
- 9.4. The planning authority under its initial planning report recognise that the area is under development pressure from Letterkenny towards Illistrim (Also spelled Ellistrim under the documents on file). It states that the incremental build-up of linear/ribbon development in the area is considerable. However, the planning authority also note that the subject site is an 'infil' site and as such the planning authority consider that such infil development would allow for the consolidation of what has already been permitted as opposed to allowing development that would exacerbate or expand on this form of development. I consider that the view of the planning authority in this particular site context to be reasonable.
- 9.5. The appellants raise issue with the proximity of the proposed dwelling to the public road and consider that the proposal, if permitted, would result in a cramped form of development.
- 9.6. I have reviewed the building line of the proposed development being 8 metres from the front boundary line (although this is varied relative to the road), in tandem with the building line of both houses south and north of the site and I consider that whilst building lines are not exactly equidistant, they are of similar dimension and generally follow the line of the serving road. I consider that both sites north and south of the subject site have a rectangular or narrow form and that the proposal, on an infill site, follows or accords with the established pattern of development on the west side of the serving road.
- 9.7. The southern gable of the proposed dwelling would, if permitted, be c28 metres from the existing dwelling to the south and the northern gable of the proposed dwelling would be c.33 metres from the existing dwelling to the north. There is a proposed private open space/lawn area to the north of the dwelling. While I acknowledge that the space to rear of the dwelling is not plentiful, this general configuration also applies to both dwellings north and south of the subject site. In terms of siting, I do not consider that given the established setting, pattern of development and spatial

context including separation distances, that the proposed development would appear cramped or be visually cluttered.

- 9.8. I note the modest scale of the proposed dwelling. The house design is generally satisfactory and is very much in keeping with the adjoining development in scale and form and accords with NH-P-7, RH-P2,7 and 9 in the County Development Plan.
- 9.9. Regarding the residential amenity of the property to the north, given the substantial separation distance between the first-floor window on the north elevation to the shared boundary, I have no concerns regarding residential amenity or privacy.
- 9.10. Regarding the residential amenity of the property to the south, I have concerns regarding the relatively short separation distance of slightly under 5 metres between the proposed first floor window on the south elevation (to bedroom no 2) and the shared boundary and potential overlooking of private open space especially considering the configuration of the site whereby the adjacent dwelling is roughly in line with the proposal and the window would directly face the north façade of the adjacent dwelling and its attendant private open space. I consider that should the board be minded to grant permission that, the first-floor window on the south elevation should be removed and the option of inserting roof lights in lieu thereof, be conditioned.
- 9.11. Landscape
- 9.12. The area within which the site is located has the designation of 'High Scenic Amenity'. Regarding this designation, Policy NH-P-7 states that 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. Considering the already developed nature of the receiving environment and the infill nature of the proposal, I do not consider that the proposal will further detract from the amenity value of the area, over and above the current situation.
- 9.13. Waste Water Treatment
- 9.14. On the date of site visit there was no general evidence of ponding or particular vegetation indicators, which would flag unsuitable soil conditions, with the exception of sparse rush vegetation. There was considerable overgrowth of fern, ash and other plant species. There is a surface water feature along the west boundary of the site.

GSI data indicates ground water flow is from south to north. This concurs with the site layout plan submitted with the Site Characterisation Assessment report.

- 9.15. It is proposed to install a septic tank and polishing filter with tertiary infiltration system (sand polishing filter) to serve the proposed dwelling.
- 9.16. A Site Characterisation Report accompanied the planning application. Upon trial hole excavation, to a depth of 1.5 metres, the water table or bedrock was not encountered (Aquifer Vulnerability rating is moderate). There was no evidence of mottling in the trial holes based on the photographic details submitted and there is no evidence of preferential flow paths. The Ground Water Protection Response (GWPS) is R1. Under Table E1 of the CoP (EPA Code of Practice 2021), it is stated that for a GWPR of R1, the risk to groundwater is 'acceptable subject to normal good practice (i.e., system selection, construction, operation and maintenance in accordance with this CoP)'. The T value of the soils on site was found to be 29.
- 9.17. The proposed dwelling house would have three bedrooms and a population equivalency (PE) of 5 persons. The proposed system has been sized/designed accordingly.
- 9.18. The site characterisation assessment concluded that a septic tank and suitably sized and suitably constructed sand polishing filter percolation would adequately treat effluent prior to discharge to ground. A fully dimensioned layout of the proposed system is submitted under Appendix A of the Site Characterisation form.
- 9.19. The planning authority was generally satisfied with the required minimum distances being achieved, pursuant to the EPA Code of Practice for Domestic Waste Water Treatment Systems (2021), (CoP), however concern was raised under the initial planner's report regarding the distance between the proposed dwelling and the percolation area on the adjoining site to the south. This issue was raised under point no 2 of the further information request. The reply to this request included a site layout map, which clearly delineated all minimum distances required.
- 9.20. Given the configuration of the site and the presence of a land drain/stream on the west boundary it is important to assess all minimum distances stipulated under the CoP. Table 6.2 of the CoP clearly sets out the *Minimum separation distance from the entire domestic waste water treatment system* to various features. The following relevant minimum distances (*inter alia*) are stipulated: 10 metres to a

watercourse/stream, 10 metres to open drain/ditch, 10 metres to adjacent septic tank/plant and infiltration area, On site dwelling house – 7 metres to tank/plant and 10 metres to infiltration area, Adjacent dwelling house – 7 metres to tank/plant and 10 metres to infiltration area, 3 metres to site boundary, and, 4 metres to road.

- 9.21. With regard to the details submitted under the application and under in particular the response to further information, all the required minimum distances are considered to be complied with.
- 9.22. The proposals for WWT are considered to be acceptable subject to compliance with the requirements of the planning authority and the EPA guidelines.
- 9.23. Rural Housing Policy
- 9.24. The subject site is located in the townland of Ballaghderg, which approximately 3.7 km north of Letterkenny.
- 9.25. The appeal site is located in a rural “area under strong urban influence”. Policy RH-P-5 states that the Council will “Consider proposals for new one-off rural housing within Areas Under Strong Urban Influence from prospective applicants that have demonstrated a genuine need for a new dwelling house and who can provide evidence that they, or their parents or grandparents, have resided at sometime within the area under strong urban influence in the vicinity of the application site for a period of at least 7 years’. The above policy is subject to compliance with other relevant policies of this plan, including RH-P-1 and RH-P-2 *inter alia*. New holiday home development will not be permitted in these areas”.
- 9.26. The Development Plan states that it is necessary to manage the extent of development in “areas under strong urban influence”, whilst facilitating applicants with a genuine “rural generated housing need”. Those with a genuine rural generated housing need could be described as persons who are an intrinsic part of the rural community or persons who work full-time or part-time in rural areas.
- 9.27. Under the planning application documentation, it is stated that one of the applicants was born and reared in the adjacent townland named Calhame, c.1.5 km from the subject site and that his family home is still there. The applicant states he resided for in excess of 7 years here. Two named family members are stated to be living in the family home. The applicants’ children are stated to have attended the National School at Illistrin, 400 metres from the site. It is also stated that one of the applicants



has worked in the area his whole life. The applicant states that their current home is rented and that it is a Mica affected property, which is due to be demolished. The rural housing need case made by the applicants is supported by a bone fide letter from a local Councillor. The Planning Authority is satisfied that the applicant has an intrinsic links to the area and therefore meets the relevant rural housing needs criteria.

9.28. With regard to Policy RH-P-2 which requires that proposed rural houses shall avoid the creation or expansion of a suburban pattern of development in the rural area and shall not create or add to ribbon development, I note the comments made by the planning officer that the proposed development is an 'infill' site and is considered to be a form of consolidation of what is already permitted. I am inclined to agree with this viewpoint and I do not consider that, in this specific context, to permit the proposal would not add to or exacerbate ribbon development. Therefore, I do not consider that to permit this dwelling in this specific spatial context would be contrary to RH-P-2.

9.29. It is considered that with regard to Policy RH-P-5 that the applicants have demonstrated a genuine need for a new dwelling house have resided at some time within the area under strong urban influence in the vicinity of the application site for a period of at least 7 years.

9.30. Traffic Safety

9.31. Adequate sight distances are demonstrated on the documentation presented north and south of the proposed entrance. It is noted that the planners report indicates that both the area planner and the roads engineer for the area visited the site on two occasions and did not find any issues with vision lines. I have no reason to doubt validity of the traffic survey submitted. On my site visit I noted that there are clear visibility lines in both directions upon egress of the site.

9.32. Other Issues

9.33. The appellant has raised an issue regarding a stated enforcement file, against the applicant(s), which is stated to be relating to a garage situated on the same road as the subject site. The issues before the Board for determination relate to the appeal site and including AA. It is considered that the planning authority is the appropriate body to deal with any such enforcement issues.

9.34. An invasive species management plan for the eradication of Japanese Knotweed was submitted under the response to further information, under Appendix II of the NIS. The proposals contained therein should be implemented. The board may wish to consider an appropriate condition in this regard.

9.35. Appropriate Assessment

9.36. ***Stage 1 - Appropriate Assessment Screening***

Compliance with Article 6(3) of the Habitats Directive

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.

9.37. *Background on the Application*

A screening report for Appropriate Assessment and Appropriate Assessment was submitted with this appeal case. The planning authority carried out AA.

9.38. *Screening for Appropriate Assessment- Test of likely significant effects*

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

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.

9.39. *Brief description of the development*

The development is described at Section 2 of this Report. In summary, permission is sought for the construction of a single storey dwelling with attic accommodation, wastewater treatment system and connection to existing services. The development includes a treatment system and polishing filter and tertiary treatment. Surface water is proposed to discharge to a stream to the west of the site.

#### 9.40. *Submissions and Observations*

The submissions from the appellant, applicant and Planning Authority are summarised as Section 6 of my Report.

#### 9.41. *European Sites*

The site is not located within or adjacent to any designated European site.

The Leenan River SAC (Site Code 002176), c 2 km from the site. The stream which flows along the west boundary of the site (Strem: EPA Code 39\_1183) discharges into the Coolboy Little stream, which flows for 1.24 km before discharging to Glashagh River, which is designated under the Leannan River SAC.

The other sites in the general area are Lough Swilly SAC (Site Code 002287) and Lough Swilly SPA (Site Code 004075), which are 5 km east of the site

There are a number of other European sites within a 15km search zone but I am satisfied that there is no possibility of significant effects arising other than for those European sites in the vicinity of the subject site.

<b>Code</b>	<b>Name</b>	<b>Distance</b>	<b>Screening Conclusion</b>
002176	The Leenan River SAC	2 km NW	Screened in due to the stream on the west boundary of the site, which flows into Coolboy Little stream which flows 1.24 km from the site and discharges to Glashagh River which is within the SAC. Indirect hydrological connection.
002287	Lough Swilly SAC	5 km East	Screened out. No hydrological impact and distance is sufficient for no impacts due to works.

004075	Lough Swilly SPA	5 km East	Screened out. No hydrological impact and distance is sufficient for no impacts due to works.
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The qualifying interests of the River Leenan SAC include the following:

1. Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae)
2. Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea
3. Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]
4. Salmo salar (Salmon)
5. Lutra lutra (Otter)
6. Najas flexilis (Slender Naiad)

The Conservation Objectives for the River Leenaun SAC is to restore and maintain favourable conservation condition for its qualifying interests.

#### 9.42. *Evaluation of potential significant effects*

The development does not give rise to any direct effects on the European sites, in terms of habitat loss or fragmentation.

There is potential for indirect hydrological connection between the subject site and European sites.

Regarding the potential for indirect effects associated with the stream on the west boundary, the construction phase gives rise to the potential for run-off containing suspended solid and/or pollutant content.

Given that it is stated that there are invasive species on the site there is also possibility of seeds being transferred off site.

Regarding the drain/stream, I am satisfied that it cannot be concluded that there is no likelihood of material being discharged to waters within the European sites. I am thus satisfied that the issue cannot be excluded at this stage.

For the operational phase, surface waters are proposed to discharge to the drain/stream. It cannot be concluded at this stage that there is no likelihood of material being discharged to waters within the European sites. I am thus satisfied that the issue cannot be excluded at this stage.

Effluent will be treated within a treatment system and polishing filter along with tertiary treatment, prior to discharge to groundwater. The site has been shown by percolation testing to be suitable for the treatment of effluent. It is relatively distant from the European sites, however given the stream on site and the source-path-connector model to a stream, which becomes a tributary to a river, which is itself a tributary of the Lennan River SAC, I am not satisfied that there is no likelihood of significant effects arising from the treatment of effluent on the site.

With regard to cumulative impacts, given the above it is important to assess same.

9.43. *Screening Determination*

9.44. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects may be likely to give rise to significant effects on European Site Nos. 004034 and 002012, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is therefore required.

9.45. ***Stage 2 – Appropriate Assessment***

The Screening process above has examined the potential for the proposed development to cause adverse effects on Natura 2000 European Sites and qualifying features of interest. A number of qualifying interests have been identified which require to be brought forward for further consideration due to potential for adverse effects as a result of the proposed development in the absence of appropriate mitigation measures.

9.46. *Likely significant effects:*

The likely significant effects on the designated sites from the proposed works are as follows:

- Introduction and facilitated spread of invasive species e.g., via construction materials or machinery,
- Pollution of River Leenan SAC (Site Code 002176) during the construction and operational phase,
- Disturbance to Annex II species of the River Leenan SAC during the construction phase i.e., Otter, Salmon.

#### 9.47. *Proposed Mitigation Measures*

With regard to the above likely significant effects a number of mitigation measures are proposed under section 6 of the submitted NIS, these include the following, inter alia:

- *Clerk of Works to be appointed to implement mitigation measures including the invasive species management plan.*
- *Silt fence to be installed prior to commencement of works to clear specifications under NIS.*
- *Settlement/Attenuation Pond to be established. Outflow from same flow through silt fence bags.*
- *Overburden removal must be controlled*
- *All construction activities to follow BS 5228-1:2009+A1 2014*
- *Noise emission levels to be controlled.*
- *Light emission levels to be controlled.*
- *Bunded storage to be implemented.*
- *Refuelling of plant to be strictly controlled.*
- *Japanese Knotweed and Himalayan Balsam to be identified and eradicated in accordance with management plan submitted under Appendix II of the NIS*
- *Surface water run off must be directed through a bypass separator before discharge off site Specifics containing within NIS.*
- *Bypass separator must be cleaned regularly by a licensed operator and records maintained.*

- *A waste water treatment system together with all tanks filters etc must be installed as per EPA Code of Practice (CoP) and manufacturers constructions*
- *Installation of the waste water treatment system must be supervised by a chartered engineer at time of installation and installed by an experienced contractor.*
- *All works to comply with the Inland Fisheries Ireland document 'Guidelines on the protection of fisheries during construction works in and adjacent to Waters 2016'.*

9.48. During the operational phase the installation of a proposed new waste water treatment system, complete with soil polishing filter will comply with the current EPA (2009) Code of Practice for Waste Water Treatment and Disposal Systems for Single Houses and be serviced annually. Drinking water will be via a new connection to the public mains. Clean water run-off e.g., rain water will be directed to a new attenuation pond. There are no predicted impacts to surface or ground water quality during the operational phase.

9.49. With regard to in-combination effects of plans and projects given the small scale of the works and given that the dwelling would be alongside two other dwellings, on an infill site, containing common species, it is considered that provided mitigation measures are in place, no cumulative impacts are predicted.

9.50. I am satisfied that an examination of the potential impacts has been analysed and evaluated using the best scientific knowledge. Significant effects on Natura 2000 sites have been identified. Where potential adverse effects were identified, key design features are prescribed to remove risks to the integrity of the European sites. I am satisfied based on the information available that if the key design features are undertaken, maintained and monitored as detailed in the NIS, adverse effects on the integrity of Natura 2000 sites will be avoided.

9.51. Accordingly, I consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the River Leenan SAC or any other European site, in view of the site's Conservation Objectives.

## **10.0 Recommendation**

10.1. I recommend that permission be granted, subject to conditions as set out below.

## **11.0 Reasons and Considerations**

Having regard to: -

- The location of the site in a rural area designated by the Donegal County Development Plan 2018-2024 as being under strong urban influence.
- The provisions of development plan Policy RH-P-5, which states proposals for new one-off housing will be considered, subject to compliance with other relevant policies,
- The provisions of National Policy Objective 19 of the National Planning Framework (2018), which states that in rural areas other than those identified as being under urban influence, proposals for single housing in the countryside should be facilitated 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,
- The provisions of the Sustainable Rural Housing Guidelines (2005), which state that in stronger rural areas the demand be accommodated for individual houses in rural areas subject to good practice in relation to matters such as siting and design as outlined elsewhere in these guidelines.

It is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.



## 12.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application dated 10<sup>th</sup> June 2022 as amended by details submitted on the 26<sup>th</sup> October 2022, except as may otherwise be required in order to comply with the following conditions.</p> <p>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><b>Reason:</b> In the interest of clarity.</p>
2.	<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 [unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant].</p> <p>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. 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><b>Reason:</b> To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is</p>

	appropriately restricted [to meeting essential local need] in the interest of the proper planning and sustainable development of the area.
3.	<p>The applicant shall appoint a suitably qualified ecologist to monitor and ensure that all avoidance/mitigation measures relating to the protection of flora and fauna are carried out in accordance with best ecological practice. A report on the implementation of these measures shall be submitted to the planning authority and retained on file as a matter of public record.</p> <p><b>Reason:</b> To protect the environmental and natural heritage of the area.</p>
4.	<p>The window on first floor on the south elevation shall be omitted and alternative proposals for roof lights may be submitted and agreed with the planning authority.</p> <p><b>Reason:</b> To prevent overlooking of adjoining residential property.</p>
5.	<p>The developer shall enter into water and wastewater connection agreements with Uisce Éireann.</p> <p><b>Reason:</b> In the interest of public health.</p>
6.	<p>The vehicular access, including visibility splays, shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p><b>Reason:</b> In the interests of traffic and road safety.</p>
7.	<p>The proposed wastewater drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent <math>\leq 10</math>)" – Environmental Protection Agency, 2021.</p> <p><b>Reason:</b> In the interest of public health.</p>
8.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing</p>

	<p>with, the planning authority prior to commencement of development. This scheme shall include the following:</p> <p>A plan to scale of not less than [1:500] showing –</p> <p>(i) The species, variety, number, size and locations of all proposed trees and shrubs [which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder] [which shall not include prunus species],</p> <p>(ii) Details of screen planting [which shall not include cupressocyparis x leylandii],</p> <p>(iii) A timescale for implementation [including details of phasing],</p> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of [five] years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p><b>Reason:</b> In the interest of residential and visual amenity.</p>
9.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.</p> <p>Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
10.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the</p>

	<p>Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p><b>Reason:</b> 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>
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‘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.’

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Aisling Dineen  
Planning Inspector  
29<sup>th</sup> September 2023